

184 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-461-000

ORDER ISSUING CERTIFICATE

(Issued July 31, 2023)

1. On May 23, 2022, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² requesting authorization to construct and operate the Southside Reliability Enhancement Project in Mecklenburg and Pittsylvania Counties, Virginia, and Davidson County, North Carolina. For the reasons discussed below, we grant the requested authorization, subject to certain conditions.

I. Background and Proposal

2. Transco, a Delaware limited liability company, is a natural gas company as defined by section 2(6) of the NGA³ engaged in the transportation of natural gas in interstate commerce. Transco's interstate transmission system extends from Texas, Louisiana, Mississippi, Alabama, and the offshore Gulf of Mexico area, through Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.⁴

3. Transco proposes to construct and operate the Southside Reliability Enhancement Project to provide up to 423,400 dekatherms per day (Dth/d) of firm transportation service along two paths on Transco's pipeline system. Along the South Virginia Lateral path, 160,000 Dth/d will be provided from Transco's existing Station 165 Zone 5 Pooling Point in Pittsylvania County, Virginia, through Transco's South Virginia Lateral A-Line

¹ 15 U.S.C. § 717f(c).

² 18 C.F.R. pt. 157 (2022).

³ 15 U.S.C. § 717a(6).

⁴ Transco May 23, 2022 Application at 4 (Application).

and B-Line to existing metering facilities in Hertford and Northampton Counties, North Carolina. Along the Mainline path, 263,400 Dth/d will be provided from Transco's interconnection with Pine Needle LNG Company, LLC's storage facility in Guilford County, North Carolina, to existing metering facilities in Iredell County, North Carolina.

4. Specifically, Transco proposes to:

- construct a new Compressor Station 168 in Mecklenburg County, Virginia, with one 33,000 horsepower (hp) electric motor drive (EMD) centrifugal compressor unit;
- install one 16,000 hp EMD compressor unit at the existing Compressor Station 166 in Pittsylvania County, Virginia;⁵
- make modifications to facilitate flow reversal at the existing Compressor Station 155 in Davidson County, North Carolina; and
- modify three existing meter stations in Hertford, Northampton, and Iredell Counties, North Carolina.

5. Transco has entered into a long-term precedent agreement with unaffiliated shipper Piedmont Natural Gas Company, Inc. (Piedmont)⁶ for 100% of the firm transportation service created by the project at a negotiated rate.⁷ After executing the precedent agreement with Piedmont, Transco held an open season from August 20, 2021, to September 9, 2021. Transco received no responses to the open season.

6. Transco estimates that the project will cost approximately \$212.53 million. It proposes to establish incremental rates under its Rate Schedule FT as recourse rates for the firm transportation service created by the project and apply its generally applicable system fuel retention and electric power rates.

⁵ The proposed additional compression at Compressor Station 166 will increase the existing certificated horsepower from 43,660 hp to 59,660 hp.

⁶ Piedmont, a wholly owned subsidiary of Duke Energy Corporation, is a local distribution company that transports, distributes, and sells natural gas to consumers in North Carolina, South Carolina, and Tennessee.

⁷ Application at 11.

II. Notice, Interventions, and Comments

7. Notice of Transco's application was published in the *Federal Register* on June 13, 2022.⁸ The notice established June 28, 2022, as the deadline to file interventions, comments, and protests. Several entities filed timely, unopposed motions to intervene or notices of intervention.⁹ On June 29, 2022, the North Carolina Utilities Commission – Public Staff filed a late motion to intervene, which was granted.¹⁰

8. The Ahoskie Chamber of Commerce, Industrial Energy Consumers of America, Lexington Area Chamber of Commerce, Mecklenburg County Board of Supervisors, New Bern Area Chamber of Commerce, North Carolina Chamber, North Carolina Farm Bureau Federation, Inc., North Carolina's Southeast, and Piedmont all filed comments in support of the project.¹¹ Upstate Forever and Sierra Club (together, Sierra Club) jointly filed a protest, arguing that the Commission must look behind Transco's precedent agreement with Piedmont.¹² Transco filed an answer responding to the comments in Sierra Club's protest.¹³ Rule 213(a)(2) of the Commission's Rules of Practice and Procedures prohibits answers to protests unless otherwise ordered by the decisional

⁸ 87 Fed. Reg. 35,758 (June 13, 2022).

⁹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations. 18 C.F.R. § 385.214(c) (2022). Timely notices of intervention are granted by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure. *Id.* § 385.214(a)(2).

¹⁰ August 15, 2022 Notice Granting Late Intervention.

¹¹ Ahoskie Chamber of Commerce June 27, 2022 Motion to Intervene at 1; Industrial Energy Consumers of America June 28, 2022 Motion to Intervene at 1; Lexington Area Chamber of Commerce June 23, 2022 Motion to Intervene at 1; New Bern Area Chamber of Commerce June 13, 2023 Comment at 1; North Carolina Chamber June 6, 2023 Comment at 1; North Carolina Farm Bureau Federation, Inc. June 2, 2023 Comment at 1; North Carolina's Southeast June 13, 2023 Comment at 1; Mecklenburg County Board of Supervisors June 23, 2022 Motion to Intervene at 1-2; Piedmont June 28, 2022 Motion to Intervene at 3.

¹² Sierra Club June 28, 2022 Protest at 9-11; Sierra Club August 24, 2022 Scoping Comment at 4-5.

¹³ Transco July 13, 2022 Answer.

authority.¹⁴ We accept Transco's answer, however, because it provides information that will assist us in our decision-making process.

III. Discussion

9. Because the proposed facilities will be used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁵

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁶ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that, in deciding whether to authorize the construction of new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

11. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, and landowners and communities affected by the route of the new pipeline facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the

¹⁴ 18 C.F.R. § 385.213(a)(2) (2022).

¹⁵ 15 U.S.C. §§ 717f(c), (e).

¹⁶ *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

1. No Subsidy Requirement and Project Need

12. As discussed above, the threshold requirement for pipelines proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined that, in general, where a pipeline proposes to charge incremental rates for new construction that are higher than the company's existing system rates, the pipeline satisfies the threshold requirement that existing shippers will not subsidize the project.¹⁷ Because Transco proposes to charge higher incremental rates than existing system rates, we find that Transco's existing shippers will not subsidize the project.

13. Transco entered into a long-term precedent agreement with Piedmont, a non-affiliated shipper, for 423,400 Dth/d of firm transportation service. A precedent agreement for 100% of the project's capacity is significant evidence of the need for the proposed project. Transco states that Piedmont will use the project capacity to increase reliability by replacing existing interruptible transportation service with firm transportation service and to supply growing demand in Transco's Zone 5.¹⁸

14. Sierra Club, however, argues that the precedent agreement with Piedmont is insufficient evidence of project need and that Transco should be required to submit more detailed information demonstrating supply constraints.¹⁹ Specifically, Sierra Club contends that the Commission must look behind the precedent agreement because Piedmont on average uses less than 100% of its existing firm transportation capacity on Transco's system and Piedmont's expected utilization rate for the new South Virginia Lateral path capacity averages only 38.6%, suggesting that the project is oversized.²⁰

¹⁷ See, e.g., *Transcon. Gas Pipe Line Co.*, 158 FERC ¶ 61,125, at P 22 (2017).

¹⁸ Application at 8, 18-20.

¹⁹ Sierra Club Protest at 9-11; Sierra Club Scoping Comment at 4-5; Sierra Club Dec. 12, 2022 Draft EIS Comment at 8-9 (asserting that the Commission should require Transco to submit: (1) more information on the number of requests received requesting to move away from interruptible service and the volume of gas for firm transportation requested; and (2) an "explanation of the volume, frequency, and duration of any interruptions in service Piedmont currently experiences" because the information in the application is insufficient to demonstrate need).

²⁰ Sierra Club Protest at 9; see also Sierra Club Scoping Comment at 4.

Sierra Club also claims that the Commission must ask Transco to provide more information about the end-users or end-uses of the gas.²¹

15. In response, Transco asserts that there is no reason to look behind its precedent agreement with Piedmont because long-term precedent agreements with unaffiliated shippers are sufficient to demonstrate project need.²² Transco further states that the difference between a pipeline's projected average utilization rate and a pipeline's maximum capacity has no bearing on project need because the maximum capacity is determined by a market analysis of customers' peak demand needs.²³ Therefore, Transco argues that the Commission should reject Sierra Club's assertion that pipeline capacity is not needed, especially considering the impacts of failing to meet demand on peak days.²⁴

16. Sierra Club's assertion that the Commission must look behind Transco's precedent agreement is unpersuasive. Here, Transco has a long-term precedent agreement with an unaffiliated shipper for 100% of the project's capacity. Sierra Club's assertion that low average utilization rates indicate that the project is not needed is not supported and does not take into account how pipeline companies and their shippers, in this case a local distribution company, design their systems to meet peak demand. As Transco explains, a difference between a pipeline's projected average utilization rate and its maximum capacity does not indicate a lack of project need because projects are designed to serve peak demand.²⁵

17. Moreover, Transco has provided evidence of recent supply constraints in Zone 5 and demonstrated that additional transportation capacity is needed to serve its existing and new customers.²⁶ Specifically, Transco asserts that several large customers in Piedmont's eastern North Carolina territory have expressed interest in moving away from interruptible service toward firm service but that Piedmont cannot accommodate the requests due to its lack of firm transportation capacity on Transco's South Virginia Lateral path.²⁷ Further, Transco states that the area to be served by the South Virginia

²¹ Sierra Club Scoping Comment at 5.

²² Transco Answer at 7.

²³ *Id.* at 7-8.

²⁴ *Id.* at 8.

²⁵ *Id.* at 7-8.

²⁶ *See* Application at 8, 18-20.

²⁷ *Id.* at 20.

Lateral path of the project in eastern North Carolina is typically the first area in Piedmont's service territory to be interrupted when natural gas demand exceeds delivery capacity.²⁸ Additionally, Piedmont asserts that securing firm transportation service along the Mainline path will increase reliability, allowing Piedmont to access its 2,634,000 Dth of liquified natural gas storage capacity (Pine Needle Capacity) during peak demand.²⁹ Piedmont states that transportation along the Mainline path is even more critical considering increased use of Transco's Zone 5 mainline, which has seen secondary and non-secondary reverse path service constrained on average 90% of the year over the last three years.³⁰ In addition to enabling Piedmont to provide additional firm service to its existing customers, Transco asserts that the project will serve customer growth driven by population increases in North Carolina, a state that has become the ninth largest in population and the sixth largest in population gain in the United States between 2010 and 2020.³¹

18. We also find that there is sufficient evidence in the record on the end use and end users of the gas. Piedmont, the sole project shipper, states that it provides services to the following facilities in eastern North Carolina: three independent municipal gas systems with firm gas requirements; four major military installations; and numerous local, regional, and government or military hospitals.³²

2. Impacts on Existing Customers, Existing Pipelines and Their Customers, and Landowners and Surrounding Communities

19. The proposed project will have no adverse effect on Transco's other existing customers because the proposed facilities are designed to provide incremental service to meet the needs of the project shipper without degradation of service to Transco's other existing customers. We also find there will be no adverse impact on other pipelines in the region or their captive customers because the project will provide additional

²⁸ *Id.* See also Piedmont Motion to Intervene at 4 (explaining that there has been a significant increase in days during the heating season where primary firm nominations exceed the combined delivery point entitlement at the Pleasant Hill and Ahoskie delivery meter stations in eastern North Carolina, increasing from 14 days in the 2013-2014 heating season to 38 days and 27 days in the 2020-2021 and 2021-2022 heating season, respectively).

²⁹ Piedmont Motion to Intervene at 4-5.

³⁰ *Id.* at 5.

³¹ Application at 20; Piedmont Motion to Intervene at 5-6.

³² Piedmont Motion to Intervene at 3; see also Application at 19.

transportation to meet the needs of the project shipper. We also note that the project will not displace existing service on any other pipeline. No pipelines or their captive customers have objected to Transco's proposal.

20. Further, we are satisfied that Transco has taken steps sufficient to minimize adverse impacts on landowners and surrounding communities. The proposed facilities were designed to maximize use of the existing footprint of Transco's system, and Transco has already acquired the land required for construction and operation of new Compressor Station 168.³³ No landowner has protested the proposal.

21. Accordingly, we find that there are demonstrated benefits of the Southside Reliability Enhancement Project, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project's benefits will outweigh any adverse economic effects on landowners and surrounding communities. Therefore, we conclude that the project is consistent with the criteria set forth in the Certificate Policy Statement and analyze the environmental impacts of the project below.³⁴

B. Rates

1. Incremental Recourse Rates

22. Transco proposes an incremental recourse rate under Rate Schedule FT for the firm transportation service created by the project, with an incremental firm daily recourse reservation charge of \$0.25025 per Dth/d and an applicable usage charge of \$0.0017 per Dth, based on 100% load factor billing determinants for the project. Transco derived its proposed incremental firm daily recourse reservation charge based on a fixed first-year cost of service of \$38,674,186³⁵ and an annual design capacity of 154,541,000 Dth. The proposed incremental charges are based on cost-of-service factors approved by the

³³ Application at 1-9.

³⁴ See Certificate Policy Statement, 88 FERC at 61,745-46 (explaining that only when the project benefits outweigh the adverse effects on the economic interests will the Commission then complete the environmental analysis).

³⁵ Application at Ex. P.

Commission, including an onshore depreciation rate and negative salvage of 2.50%³⁶ and a pre-tax return of 12.83%, which reflects a 12.50% return on equity.³⁷

23. We have reviewed Transco's proposed cost of service and initial rates and find that they reasonably reflect current Commission policy. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.³⁸ Transco's proposed incremental daily reservation charge of \$0.25025 per Dth/d plus the proposed usage charge of \$0.0017 per Dth (total of \$0.25195 per Dth) is higher than Transco's current Rate Schedule FT, Zone 5-Zone 5, system maximum daily reservation charge of \$0.18679 per Dth/d plus the Rate Schedule FT Station 165 Zone 5 Pool-Zone 5 or the Rate Schedule FT Zone 5-Zone 5 system maximum usage charge of \$0.02183 per Dth (total of \$0.20817 per Dth). Transco's incremental rates are above the system maximum recourse rates; therefore, we approve the incremental firm rate for this project. In addition, Transco is directed to charge the applicable system interruptible rate for the project.

2. Fuel Retention and Electric Power Rates

24. Transco proposes to apply its generally applicable system fuel retention and electric power rates to the project. To support its proposal, Transco submitted a fuel study that modeled the impact of the project on system compressor fuel and electric power consumption.³⁹ The fuel study uses a representative sampling of the daily volumes traversing the project path for a 365-day period between January 1, 2021, and December 31, 2021. Transco states that it selected 10 days from this period that are representative of the range of system operating conditions experienced on Transco's system. Transco's study demonstrates that the project would result in an overall 1.59% reduction in system fuel use (system compressor fuel and electric power consumption)

³⁶ Stated depreciation rates included in the Stipulation and Agreement (Settlement) approved by the Commission on March 24, 2020, in Docket No. RP18-1126-000, et al. *See Transcon. Gas Pipe Line Co., LLC*, 170 FERC ¶ 61,245 (2020).

³⁷ Transco notes that use of a 12.83% pre-tax return includes the return on equity and income tax rates approved in its Settlement (Article V, section A) and is consistent with its approved initial rates filed for its Leidy South Project, the first expansion project filed by Transco subsequent to its Settlement.

³⁸ Certificate Policy Statement, 88 FERC at 61,745.

³⁹ Application at Ex. Z-1.

attributable to existing customers,⁴⁰ yielding a net system fuel benefit to existing system customers. Therefore, we will approve Transco's proposal to charge its generally applicable system fuel retention percentage and system electric power rates for the project facilities.

3. Reporting Incremental Costs

25. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged. The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.⁴¹ Therefore, we require Transco to keep separate books and accounting of costs and revenues attributable to the incremental capacity created by the project as required by section 154.309 of the Commission's regulations.⁴² The books should be maintained with applicable cross-reference and the information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.⁴³

4. Negotiated Rates

26. Transco's *pro forma* tariff provides for Transco to charge negotiated rates for its proposed services. Transco proposes to provide service to Piedmont under a negotiated rate agreement. Transco must file either the negotiated rate agreement or tariff records

⁴⁰ *Id.* at 2.

⁴¹ 18 C.F.R. § 154.309 (2022).

⁴² *Id.*

⁴³ See *Revisions to Forms, Statements, & Reporting Requirements for Nat. Gas Pipelines*, Order No. 710, 122 FERC ¶ 61,262, at P 23 (2008).

setting forth the essential elements of the agreement in accordance with the Alternative Rate Policy Statement⁴⁴ and the Commission's negotiated rate policies.⁴⁵

C. Environmental Analysis

27. On December 15, 2021, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Southside Reliability Enhancement Project and Notice of Public Virtual Scoping Session*. The notice was published in the *Federal Register* on December 23, 2021, and opened a 30-day scoping period, with comments due on January 14, 2022.⁴⁶ The notice was mailed to 624 entities, including federal, state, and local agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners; local libraries and newspapers; and other stakeholders who had indicated an interest in the project. Commission staff held a virtual public scoping session on January 5, 2022, to receive public comments.

28. On July 25, 2022, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Southside Reliability Enhancement Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review*. This notice was published in the *Federal Register* on August 1, 2022,⁴⁷ and mailed to project stakeholders. It opened an additional scoping period, with comments due on August 24, 2022. In response to the notices, the Commission received 23 written comments on the project. Additionally, two individuals

⁴⁴ *Alts. to Traditional Cost-of-Serv. Ratemaking for Nat. Gas Pipelines; Regulation of Negotiated Transportation Servs. of Nat. Gas Pipelines*, 74 FERC ¶ 61,076, *clarification granted*, 74 FERC ¶ 61,194, *order on reh'g & clarification*, 75 FERC ¶ 61,024, *reh'g denied*, 75 FERC ¶ 61,066, *reh'g dismissed*, 75 FERC ¶ 61,291 (1996), *petition denied sub nom. Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

⁴⁵ *Nat. Gas Pipelines Negotiated Rate Policies & Pracs.; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g & clarification*, 114 FERC ¶ 61,042, *reh'g dismissed & clarification denied*, 114 FERC ¶ 61,304 (2006).

⁴⁶ 86 Fed. Reg. 72,949 (Dec. 23, 2021). The Notice of Scoping was issued during the Commission's pre-filing review process for Transco's project that began on October 19, 2021, in Docket No. PF22-1-000.

⁴⁷ 87 Fed. Reg. 46,953 (Aug. 1, 2022).

provided oral comments during the virtual scoping sessions, which were transcribed by a court reporter.⁴⁸

29. Pursuant to the National Environmental Policy Act of 1969 (NEPA),⁴⁹ Commission staff prepared a draft EIS for the project, which was issued on October 21, 2022, and addressed all substantive environmental comments received prior to issuance. Notice of the draft EIS was published in the *Federal Register* on October 27, 2022, establishing a 45-day public comment period that ended on December 12, 2022.⁵⁰ The notice was also mailed to 601 stakeholders. Commission staff held one public comment session on the draft EIS on November 16, 2022. No comments were received during the session. In response to the draft EIS, the Commission received comments from the Virginia Department of Environmental Quality, the U.S. Environmental Protection Agency (EPA), Sierra Club, the North Carolina Department of Natural and Cultural Resources, and Transco.⁵¹ The comments raised a variety of issues, including purpose and need, best management practices, state permitting requirements and regulations, alternatives, cultural resources, water resources, threatened and endangered species, environmental justice, air quality, and greenhouse gas (GHG) emissions and climate change.

30. Commission staff issued the final EIS for the project on February 24, 2023, and published a Notice of Availability in the *Federal Register* on March 2, 2023.⁵² The final EIS addresses: geology; soils; water resources; wetlands; vegetation; wildlife; aquatic resources; threatened and endangered species; land use; recreation; visual resources; socioeconomics; environmental justice; cultural resources; air quality; noise; GHGs and climate change; safety; cumulative impacts; and alternatives. The final EIS addresses all substantive environmental comments received on the draft EIS. With regard to climate change impacts, the final EIS does not characterize the project's GHG emissions as significant or insignificant, but we disclose the reasonably foreseeable emissions below. For the remainder of resources assessed, the EIS concludes that, with the mitigation measures, project impacts would be reduced to less than significant levels. After

⁴⁸ The transcript is available on FERC's eLibrary under accession number 20220124-4000.

⁴⁹ 42 U.S.C. §§ 4321 *et seq.* See also 18 C.F.R. pt. 380 (2022) (Commission's regulations implementing NEPA).

⁵⁰ 87 Fed. Reg. 65,053 (Oct. 27, 2022).

⁵¹ Additionally, the U.S. Department of the Interior filed a letter stating that it did not have comments on the draft EIS.

⁵² 88 Fed. Reg. 13,114 (Mar. 2, 2023).

issuance of the final EIS, four entities submitted comments in support of the project.⁵³ Additionally, individuals Thomas and Lyn Emory submitted comments on the final EIS expressing concern for the project’s environmental impacts.⁵⁴ The Commission also received comments on the final EIS from the EPA regarding upstream GHG emissions⁵⁵ and comments from Sierra Club regarding the Compressor Station 167 alternative.⁵⁶ Sierra Club’s comments are addressed below.

1. Environmental Justice

31. In conducting NEPA reviews of proposed natural gas projects, the Commission follows the instruction of Executive Order 12898, which directs federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority and low-income populations (i.e., environmental justice communities).⁵⁷ Executive Order 14008 also directs agencies to develop “programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.”⁵⁸ Environmental justice is “the fair treatment and meaningful involvement of

⁵³ See *supra* P 8.

⁵⁴ Thomas and Lyn Emory May 31, 2023 Comment at 1.

⁵⁵ EPA April 3, 2023 Final EIS Comment at 1-2.

⁵⁶ Sierra Club May 22, 2023 Final EIS Comment at 1. Although Upstate Forever joined Sierra Club in comments on the application and draft EIS, Upstate Forever did not join Sierra Club in its comments on the final EIS.

⁵⁷ Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless addresses environmental justice in its analysis, in accordance with our governing regulations, guidance, and statutory duties. See 15 U.S.C. § 717f; see also 18 C.F.R. § 380.12(g) (2022) (requiring applicants to submit information about the socioeconomic impact area of a project for the Commission’s consideration during NEPA review); Commission, *Guidance Manual for Environmental Report Preparation* at 4-76 to 4-80 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf>.

⁵⁸ Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021). The term “environmental justice community” includes disadvantaged communities that have been historically marginalized and overburdened by pollution. *Id.* at 7629. The term also includes, but may not be limited to minority populations, low-income populations, or

all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”⁵⁹

32. Consistent with the Council on Environmental Quality (CEQ)⁶⁰ and EPA⁶¹ guidance and recommendations, the Commission’s methodology for assessing environmental justice impacts considers: (1) whether environmental justice communities

indigenous peoples. *See* EPA, EJ 2020 Glossary (Sept. 6, 2022), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

⁵⁹ EPA, *Learn About Environmental Justice*, (Sept. 6, 2022), <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>. (Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. *Id.* Meaningful involvement of potentially affected environmental justice community residents means: (1) people have an appropriate opportunity to participate in decisions about a proposed activity that may affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) community concerns will be considered in the decision-making process; and (4) decision makers will seek out and facilitate the involvement of those potentially affected. *Id.*

⁶⁰ CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 4 (Dec. 1997) (CEQ’s *Environmental Justice Guidance*), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>. CEQ offers recommendations on how federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. There were opportunities for public involvement for environmental justice communities during the Commission’s environmental review processes, though the record does not demonstrate that these opportunities were targeted at engaging environmental justice communities. *See supra* P 7.

⁶¹ *See generally* EPA, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016). (*Promising Practices*) https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

(e.g., minority or low-income populations)⁶² exist in the project area; (2) whether impacts on environmental justice communities are disproportionately high and adverse; and (3) possible mitigation measures. As recommended in *Promising Practices*, the Commission uses the 50% and the meaningfully greater analysis methods to identify minority populations.⁶³ Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county.⁶⁴

33. CEQ's *Environmental Justice Guidance* also directs low-income populations to be identified based on the annual statistical poverty thresholds from the U.S. Census Bureau. Using *Promising Practices*' low-income threshold criteria method, low-income populations are identified as block groups where the percent of a low-income population in the identified block group is equal to or greater than that of the county.

34. To identify potential environmental justice communities, Commission staff used 2020 U.S. Census American Community Survey data⁶⁵ for the race, ethnicity, and poverty data at the state, county, and block group level.⁶⁶ Additionally, in accordance with *Promising Practices*, staff used EJScreen, EPA's environmental justice mapping and screening tool, as an initial step to gather information regarding minority and low-income

⁶² See generally Exec. Order No. 12898, 59 Fed. Reg. 7629. Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

⁶³ See *Promising Practices* at 21-25.

⁶⁴ Final EIS at 4-63. Here, Commission staff selected Pittsylvania, Mecklenburg, and Greensville Counties, Virginia, and Davidson, Hertford, Iredell, Mecklenburg, and Northampton Counties, North Carolina, as comparable reference communities to ensure that affected environmental justice communities are properly identified.

⁶⁵ U.S. Census Bureau, American Community Survey 2020 ACS 5-Year Estimates Detailed Tables, File# B17017, *Poverty Status in the Past 12 Months by Household Type by Age of Householder*, <https://data.census.gov/cedsci/table?q=B17017>; File #B03002 *Hispanic or Latino Origin By Race*, <https://data.census.gov/cedsci/table?q=b03002>.

⁶⁶ For this project, Commission staff chose a one-mile radius around the project boundary as the area of study because the project uses only electric driven compression, which results in limited air emissions. See Final EIS at 4-63. The one-mile radius around the compression facilities is sufficiently broad considering the likely concentration of construction emissions, noise, visual, and traffic impacts proximal to the aboveground facilities.

populations; potential environmental quality issues; environmental and demographic indicators; and other important factors.

35. Once staff collected the block group level data, as discussed in further detail below, staff conducted an impacts analysis for the identified environmental justice communities, and evaluated health or environmental hazards; the natural physical environment; and associated social, economic, and cultural factors to determine whether impacts to environmental justice communities are disproportionately high and adverse and whether those impacts were significant.⁶⁷ For this project, Commission staff assessed whether impacts to an environmental justice community were disproportionately high and adverse, consistent with EPA's recommendations in *Promising Practices*.⁶⁸

36. Staff identified 10 U.S. Census block groups⁶⁹ within the geographic scope of the project, where the population exceeds the defined thresholds for minority and/or low-income communities, and are, therefore, environmental justice communities.⁷⁰

37. Staff determined that Compressor Station 155 is not within an environmental justice community, and out of the five block groups within the geographic scope, no block groups are considered environmental justice communities. Compressor Station 166 is within an environmental justice community (Census Tract 105, Block Group 1), and out of the four block groups within the geographic scope, three block groups are considered environmental justice communities based on the minority threshold. Compressor Station 168 is within an environmental justice community (Census Tract 9304.01, Block Group 1), and the one block group within the geographic scope is considered an environmental justice community based on the low-income threshold. The Ahoskie Meter Station is within an environmental justice community (Census Tract 9503,

⁶⁷ See *Promising Practices* at 33 (stating that “an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA” and in other circumstances “an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA”).

⁶⁸ *Id.* at 44-46 (explaining that there are various approaches to determining whether an action will cause a disproportionately high and adverse impact, and that one recommended approach is to consider whether an impact would be “predominantly borne by minority populations or low-income populations”). We recognize that EPA and CEQ are in the process of updating their guidance regarding environmental justice, and we will review and incorporate that anticipated guidance in our future analysis, as appropriate.

⁶⁹ Census block groups are statistical divisions of census tracts that generally contain between 600 and 3,000 people (U.S. Census Bureau, 2021).

⁷⁰ See Final EIS at Table 4.8.7-1 for the full population data.

Block Group 1), and out of the four block groups within the geographic scope, two of the block groups are considered environmental justice communities based on the minority threshold and one of the block groups is an environmental justice community based on the minority and low-income thresholds. The Iredell Meter Station is not within an environmental justice community (Census Tract 614.07, Block Group 2); however, out of the six block groups within the geographic scope, two of the block groups are considered environmental justice communities based on the low-income threshold. The Pleasant Hill Meter Station is within an environmental justice community (Census Tract 9203, Block Group 2), and out of the two block groups within the geographic scope, one block group is considered an environmental justice community based on the minority and low-income threshold.

38. Based on the scope of the project, staff determined project-related impacts on visual resources, socioeconomics and traffic, air quality, noise, and cumulative impacts from project construction and operation may adversely affect the identified environmental justice communities. Environmental justice concerns are not present for other resource areas, such as geology, groundwater, water quality, wetlands, wildlife, or cultural resources due to the minimal overall impact the project would have on these resources.

a. Visual Impacts

39. Impacts on visual and aesthetic resources are anticipated to be minor and temporary during construction.⁷¹ Compressor Station 166 is an existing compressor station in an identified environmental justice block group (Census Tract 105, Block Group 1). The nearest residence is 396 feet east of the compressor station workspace. Construction of compression facilities at the existing Compressor Station 166 would mostly be within an area previously disturbed during construction of the existing compressor station and would be consistent with the land use and visual character that currently exists at the compressor station. Transco filed two visual simulations of the new compressor station facilities and proposed to install new native, or equally appropriate, trees to screen views, such as loblolly pine, eastern white pine, or eastern redcedar. The visual simulation showed that, with this proposed vegetation screening, Compressor Station 166 could be fully obscured from view from the neighboring residence within five years of planting the trees. The final EIS concludes, and we agree, that based on Transco's visual simulation and proposed visual screening, visual impacts from the construction and operation of Compressor Station 166 would be less than significant.

⁷¹ *Id.* at 4-74.

40. Compressor Station 168 is a new facility within an identified environmental justice block group (Census Tract 9304.01, Block Group 1). The nearest residences are 362 feet north and 1,129 feet south from the compressor station workspace. Construction activities would occur on both sides of Country Club Road; the west side of the road would be used for construction staging, after which it would be revegetated/restored. Potential visual effects may occur where the workspace areas are adjacent to Country Club Road and may be seen by passing motorists or nearby residences to the north. Temporary visual impacts would occur from the clearing of workspace areas and construction activities. Transco completed a Visual Impacts Assessment for Compressor Station 168 and proposed to preserve existing trees along the road, install evergreen trees in specific locations along the site perimeter to form a screening hedgerow, and install an earthen berm parallel to the main roadway to minimize visual impacts on nearby residences and passing motorists. Based on these visual mitigation measures, the final EIS concludes that visual impacts from the construction and operation of Compressor Station 168 would be less than significant.⁷² We agree.

41. The Ahoskie Meter Station is an existing facility within an identified environmental justice block group (Census Block 9503, Block Group 1). The nearest residence is 1,325 feet to the south from the meter station workspace. The Pleasant Hill Meter Station is an existing facility within an identified environmental justice block group (Census Block 9203.02, Block Group 2). The nearest residence is 985 feet to the northeast from the meter station workspace. Visual impacts from the construction and operation of the Ahoskie and Pleasant Hill Meter Stations would not result in a change on the visual character of the surrounding project area. Given the existing vegetation (trees) and that modification of the meter stations would not alter the existing landscape, the final EIS concludes, and we agree, that there would be minimal visual impacts from the construction and operation of the Ahoskie and Pleasant Hill Meter Stations.⁷³

42. The Iredell Meter Station is an existing facility not within an environmental justice block group (Census Tract 614.07, Block Group 2) but has environmental justice communities within its one-mile geographic scope. The nearest residence is 1,974 feet southeast and across Lake Norman from the meter station. The Iredell Meter Station is likely not visible from users of Lake Norman or the residences on the east side of Lake Norman due to existing vegetation (trees) along the lake, which would likely obstruct views of the facility. The final EIS concludes that visual impacts from the construction and operation of Iredell Meter Station would be less than significant.⁷⁴ We agree.

⁷² *Id.* at 4-44 to 4-46, 4-74 to 4-75.

⁷³ *Id.* at 4-44, 4-45, 4-75.

⁷⁴ *Id.* at 4-45, 4-75.

43. Based on the foregoing, we conclude that visual impacts on environmental justice communities would be less than significant.

b. Socioeconomic and Traffic Impacts

44. With respect to socioeconomic impacts, staff determined that traffic delays and an increase in demand for public services may occur during the construction period (three to 12 months). The temporary influx of about 285 workers (171 non-local workers) would increase the population by about 0.2% for Mecklenburg County, Virginia, and 0.1% each for Pittsylvania County, Virginia, and Davidson, Northampton, Hertford, and Iredell Counties, North Carolina, which could increase the demand for housing, law enforcement, and medical care during construction.⁷⁵ Additionally, there would be an increase in the use of area roads by heavy construction equipment and associated trucks and vehicles resulting in short term impacts on roadways, lasting the duration of construction. Transco would implement its Traffic Management Plan to minimize project effects on local traffic and transportation systems during construction, which includes maintaining vehicle access to residences, the use of flaggers, keeping roadways clear of mud, and repairing roadways as necessary.⁷⁶ Transco anticipates two new permanent employees following construction and during operation of the project facilities, and staff determined that operating the project would not substantially increase traffic on local roads. With the mitigation measures in Transco's Traffic Management Plan, staff determined that socioeconomic and traffic-related impacts on the population, including environmental justice communities, would be minor, short-term, and less than significant.⁷⁷ We agree.

c. Air Emissions

45. Construction emissions would result in short-term, localized impacts in the immediate vicinity of construction work areas. Transco would employ fugitive dust suppression measures as outlined in its Dust Control Plan. Transco stated that it would use construction equipment and vehicles that comply with EPA mobile and non-road emission regulations and usage of commercial gasoline and diesel fuel products that meet specifications of applicable federal and state air pollution control regulations. Transco has also stated that it would comply with state and local idling restrictions.⁷⁸

⁷⁵ *Id.* at 4-77.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 4-80.

46. Transco proposes to install new electric-driven compression at proposed Compressor Station 168 and existing Compressor Station 166, which are both in environmental justice communities. New emissions would result from the proposed natural gas-fired emergency generators (to be operated as backup power during emergencies) and fugitive emissions from miscellaneous small storage tanks, truck loading, piping components, and blowdown events at each station. Blowdowns are typically infrequent and short-duration releases of natural gas, occurring only in conjunction with certain maintenance activities or in emergency situations. Compressor Station 166 and Compressor Station 168 are both in areas in attainment with the National Ambient Air Quality Standards (NAAQS). Additionally, emissions from the Ahoskie Meter Station and Pleasant Hill Meter Station would be limited to fugitive releases. The project would be in compliance with the NAAQS during operations and NAAQS are designated to protect sensitive populations.⁷⁹ Based on the foregoing, we agree with the conclusion in the final EIS that the project would not result in significant impacts on air quality.

47. Staff determined,⁸⁰ and we agree, that the air quality impacts from construction and the operation of the project would not result in a significant impact on local air quality, including air quality impacts on environmental justice communities.

d. Noise Impacts

48. Noise impacts during construction would be temporary. Transco states that construction would typically occur between the hours of 7 a.m. to 7 p.m., Monday through Saturday. Transco acknowledges, however, that some construction activities may need to start early and/or extend into nighttime hours or into Sunday when, due to safety reasons, Transco may be unable to halt ongoing construction activities at a specific time.⁸¹ Transco states that activities conducted outside of normal daytime hours

⁷⁹ The combustion of natural gas produces the criteria pollutants regulated by NAAQS as well as volatile organic compounds including hazardous air pollutant chemicals known to cause health impacts. Final EIS at 4-77.

⁸⁰ *Id.* at 4-78.

⁸¹ *Id.* at 4-91. Activities that may require extended construction hours include preparing for and conducting strength and leak testing of piping; final tie-in welds and X-ray of welds; electrical conductor installation into conduit runs and wiring raceways at compressor stations; termination and verification of conductors at compressor stations; certain pre-commissioning and commissioning activities completion of tie-ins initiated earlier in the day; maintenance of construction equipment; running pumps during rain events or to prevent freeze-ups during cold weather; heating of concrete when below 40 degrees Fahrenheit; and hydrostatic testing.

generally will be low-noise generating activities. Transco will notify nearby residents at least seven days prior to initiation of construction activities and will inform residents that extended work into nighttime hours or Sunday work may occur. Further, to mitigate any potential for adverse impacts on noise-sensitive areas (NSA) during extended or Sunday work, Transco plans to implement mitigation measures as necessary, such as minimizing equipment back-up alarms, installing sound barriers, or offering temporary relocation assistance. The final EIS concluded, and we agree that, because of the limited duration of construction activities, the distance from noise sensitive areas (the closest NSA is 1,250 feet from Compressor Station 168), and because the majority of construction activities will be limited to daytime hours, and any nighttime construction noise will be mitigated, no significant noise impacts are anticipated from the construction of the proposed project.⁸²

49. The project would include the operation of new Compressor Station 168 and new equipment at existing Compressor Station 166 and the existing Pleasant Hill Meter Station. Based on the nature of proposed modifications, the existing Ahoskie and Iredell Meter Stations would not result in noise impacts on nearby noise sensitive areas. With respect to noise levels during operation of the compressor stations, total operation of Compressor Station 166 (including existing ambient noise levels) would result in a day-night noise level (L_{dn}) of 50.3 decibels on the A-weighted scale (dBA) (a 1.2 dBA increase above the existing noise level) at the nearest noise sensitive area. Operation of Compressor Station 168 (including existing ambient noise levels) would result in a total L_{dn} of 48.4 dBA (a 7.7 dBA increase above the existing noise level) at the nearest noise sensitive area.⁸³ Operation of the Pleasant Hill Meter Station would result in a total L_{dn} of 53.9 dBA (no increase to the existing noise level) at the nearest noise sensitive area. Environmental Condition 13 in the Appendix to this order requires Transco to verify compliance with the Commission's noise standards, which requires that operational noise not exceed an L_{dn} of 55 dBA at any nearby NSAs, by conducting a noise survey after the new and modified compressor facilities are placed into service. With implementation of this noise condition, the final EIS concludes that noise impacts on nearby noise sensitive areas would be less than significant. We agree.

e. Cumulative Impacts

50. With respect to cumulative impacts, there are 13 present and reasonably foreseeable projects or actions that occur within the geographic scope of each resource area for the project. Environmental justice communities in the study area would experience cumulative impacts on socioeconomics, traffic, noise, air quality, GHG, and

⁸² *Id.* at 4-93.

⁸³ *Id.* at 4-93, 4-94.

visual impacts related to the project and these additional projects. The final EIS concludes that cumulative impacts on environmental justice communities related to socioeconomics, traffic, noise, and air quality would be less than significant. We agree.

f. Environmental Justice Conclusion

51. As described in the final EIS, the proposed project will have a range of impacts on the environment and individuals living in the vicinity of the project, including environmental justice populations. Staff concluded that impacts from construction and operation of new Compressor Station 168, at existing Compressor Station 166, and at the existing Ahoskie and Pleasant Hill Meter Stations on environmental justice populations would be disproportionately high and adverse because the impacts from these facilities would be predominately borne by environmental justice communities.⁸⁴ However, these impacts, including those associated with traffic, visual, air quality, and construction and operational noise for these components, would be less than significant.⁸⁵

2. Greenhouse Gas Emissions and Climate Change

52. The CEQ defines effects or impacts as “changes to the human environment from the proposed action or alternatives that are reasonably foreseeable,” which include those effects that “occur at the same time and place” and those that “are later in time or farther removed in distance, but are still reasonably foreseeable.”⁸⁶ An impact is reasonably foreseeable if it is “sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.”⁸⁷

53. For the Southside Reliability Enhancement Project, we find that the construction emissions direct operational emissions and downstream emissions are reasonably foreseeable.⁸⁸ The final EIS estimates that construction of the project may result in

⁸⁴ *Id.* at 4-80.

⁸⁵ *Id.*

⁸⁶ 40 C.F.R. § 1508.1(g) (2022).

⁸⁷ *Id.* § 1508.1(aa).

⁸⁸ See generally *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (explaining that “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause” and that “[t]he Court analogized this requirement to the ‘familiar doctrine of proximate cause from tort law’”) (citation omitted); *Food & Water Watch v. FERC*, 28 F.4th 277, 288 (D.C. Cir. 2022) (“Foreseeability depends on information about the ‘destination and end use of the gas in question.’”) (citation omitted); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir.

emissions of up to 17,645 metric tons of carbon dioxide equivalents (CO₂e) over the duration of construction.⁸⁹ The project's estimated operational emissions are 3,700 metric tons per year (tpy) CO₂e.⁹⁰

54. With respect to downstream emissions, the final EIS calculated that a full-burn of the project's design capacity would result in 8.23 million metric tpy of CO₂e emissions.⁹¹

55. Sierra Club and EPA assert that upstream emissions are reasonably foreseeable, and that the Commission should include upstream emissions in its social cost of GHG calculations.⁹² Sierra Club contends that, even in the absence of complete information, the Commission is not absolved from "reasonable forecasting"⁹³ and that the Commission must "at the very least attempt to obtain the information necessary to fulfill its statutory responsibilities."⁹⁴ As explained below, the upstream emissions are not reasonably foreseeable.

56. CEQ's regulations require agencies to consider indirect effects or impacts that "are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."⁹⁵ The courts have found that an impact is reasonably

2017) (*Sabal Trail*) ("FERC should have estimated the amount of power-plant carbon emissions that the pipelines will make possible.");

⁸⁹ Final EIS at 4-86 to 4-89, tbl. 4.9.4-1.

⁹⁰ *Id.* at 4-87 to 4-89, tbls. 4.9.4-2, 4.9.4-3.

⁹¹ Transco urges the Commission to estimate the potential downstream GHG emissions using the projected utilization rate of 38.6%. For informational purposes, assuming 38.6% utilization of downstream end-use, the emissions from the downstream combustion of the 160,000 dekatherms per day of gas transported by the project along the South Virginia Lateral path would be 1.16 million metric tpy of CO₂e emissions.

⁹² EPA Dec. 12, 2022 Draft EIS Comment at 4; Sierra Club Draft EIS Comment at 23-25; EPA Apr. 3, 2023 Final EIS Comment at 1-2.

⁹³ Sierra Club Draft EIS Comment at 25.

⁹⁴ *Id.* at 24.

⁹⁵ *See* 40 C.F.R. § 1508.1(g)(2) (2022).

foreseeable if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”⁹⁶

57. Although courts have held that NEPA requires “reasonable forecasting,”⁹⁷ an agency “is not required to engage in speculative analysis”⁹⁸ or “to do the impractical, if not enough information is available to permit meaningful consideration.”⁹⁹ The environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by CEQ’s regulations, particularly, where, as here, the supply source is unknown.¹⁰⁰ Transco stated in its application that the natural gas to be shipped through the proposed project would originate from the many and varied production areas accessible by Transco’s extensive pipeline system and would likely change throughout the project’s operational life and that there are no specific natural gas reserves or wells associated with the project.¹⁰¹ We therefore find that the upstream emissions are not reasonably foreseeable effects of the proposed project.

58. Sierra Club points to a recommendation by EPA that the Commission should consider whether the project will foreseeably induce production and that upstream

⁹⁶ *EarthReports, Inc. v. FERC*, 828 F.3d 949, 955 (D.C. Cir. 2016) (citations omitted); *see also Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992).

⁹⁷ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1079 (9th Cir. 2011) (quoting *Selkirk Conservation All. v. Forsgren*, 336 F.3d 944, 962 (9th Cir. 2003)).

⁹⁸ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d at 1078.

⁹⁹ *Id.* (quoting *Env’t Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)).

¹⁰⁰ *E.g., Equitrans, L.P.*, 83 FERC ¶ 61,200, at P 42 (2023); *see, e.g., Transcon. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,148, at P 93 (2023); *Cent. N.Y. Oil & Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh’g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 F. App’x. 472, 474-75 (2d Cir. 2012) (unpublished opinion); *see also Nat’l Fuel Gas Supply Corp. Empire Pipeline, Inc.*, 164 FERC ¶ 61,084, at P 102 (2018).

¹⁰¹ Application at 9-32. *See also Adelphia Gateway, LLC*, 169 FERC ¶ 61,220 at P 243 (finding that impacts of upstream natural production were not an indirect effect of the project were there is no evidence that would help predict the number and location of any additional wells that would be drilled as a result of any production demand associated with the project).

emissions are reasonably foreseeable.¹⁰² As we explain above, the impacts from production here are too speculative to be reasonably foreseeable.

59. Sierra Club argues that if the Commission believes it lacks sufficient information to assess upstream impacts, it must request from Transco any additional information that is needed to do the analysis, including the specific source of natural gas within the production system or at least estimates derived from system-wide averages.¹⁰³ As noted above, in its application Transco stated that the gas shipped through the pipeline would come from many and varied production areas and would change throughout the project's life. Transco also stated that "Piedmont will be responsible for contracting directly with suppliers of natural gas and arranging for deliveries of gas supplies that will be transported from the Receipt Point(s) to the Delivery Point(s) under the Project."¹⁰⁴ In other words, Piedmont as the project shipper will be responsible for sourcing its own gas and the source(s) from which it does so may change throughout the project's operation.

60. As we have previously explained,¹⁰⁵ we compare GHG emissions to the total GHG emissions of the United States as a whole and at the state level, which allows us to contextualize the project's projected emissions. In 2021, 5,586 million metric tons of CO₂e were emitted at a national level (inclusive of CO₂e sources and sinks).¹⁰⁶ Construction-related emissions from the project could potentially increase CO₂e emissions based on the 2021 national levels by 0.0003%.¹⁰⁷ In subsequent years, project operations based on the maximum direct GHG emissions of the project could potentially increase CO₂e emissions based on the 2021 national levels by 0.15%.¹⁰⁸

¹⁰² See Sierra Club Draft EIS Comment at 23-24.

¹⁰³ *Id.* at 24.

¹⁰⁴ Application at 12.

¹⁰⁵ See *Tex. E. Transmission, LP*, 180 FERC ¶ 61,186, at P 28 (2022); *Golden Pass LNG Terminal, LLC*, 180 FERC ¶ 61,058, at P 21 (2022).

¹⁰⁶ Final EIS at 4-118; EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021* at ES-2 (Apr. 19, 2023), <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks>. The EIS disclosed the project's GHG emissions in comparison to the 2020 national GHG inventory levels; here, we provide an updated analysis using the 2021 nation GHG inventory levels.

¹⁰⁷ Final EIS at 4-118.

¹⁰⁸ *Id.* at 4-119.

61. At the state level, energy related carbon dioxide (CO₂) emissions in North Carolina were 106.5 million metric tons in 2020.¹⁰⁹ Construction emissions from the project could potentially increase CO₂ emissions based on the North Carolina 2020 levels by 0.008%. In subsequent years, the project operations, including downstream end use, could potentially increase emissions by approximately 8%.¹¹⁰

62. In Virginia, energy related CO₂ emissions were 98.2 million metric tons in 2020.¹¹¹ GHG emissions in Virginia would result from direct construction and operational emissions only. Construction emissions from the project could potentially increase CO₂e emissions based on the Virginia 2020 levels by 0.01%. In subsequent years, project operations could potentially increase emissions by 0.003%.

63. When states have GHG emissions reduction targets, a project's GHG emissions are compared to those state goals to provide additional context.¹¹² The state of North Carolina set an executive target in 2022 to reduce GHG emissions 50% below 2005 levels by 2030, and to reach net-zero GHG emissions as soon as possible but no later than 2050.¹¹³ Based on the operational and downstream emissions for the project in North Carolina, the project would contribute about 11% of the state's 2030 goals.¹¹⁴ The

¹⁰⁹ U.S. Energy Information Administration, *Table 1, State Energy-Related Carbon Dioxide Emissions by Year, Unadjusted: North Carolina* (Oct. 11, 2022), <https://www.eia.gov/environment/emissions/state/> (accessed Mar. 13, 2023). The EIS disclosed the project's GHG emissions in comparison to the 2019 state GHG inventory levels; here, we are providing an updated analysis using the 2020 numbers.

¹¹⁰ Final EIS at 4-119.

¹¹¹ U.S. Energy Information Administration, *Table 1, State Energy-Related Carbon Dioxide Emissions by Year, Unadjusted: Virginia* (Oct. 11, 2023), <https://www.eia.gov/environment/emissions/state/> (accessed Mar. 13, 2023).

¹¹² See, e.g., *Tex. E. Transmission, LP*, 180 FERC ¶ 61,186 at P 28 and *Golden Pass Pipeline, LLC*, 180 FERC ¶ 61,058 at P 21.

¹¹³ *U.S. State Greenhouse Gas Emissions Targets, North Carolina* <https://www.c2es.org/document/greenhouse-gas-emissions-targets/> (accessed Sept. 26, 2022).

¹¹⁴ *Id.* North Carolina's CO₂ emissions in 2005 were 154.2 million metric tons; therefore, we consider the 2030 GHG emission target to be 77.1 million metric tons.

Commonwealth of Virginia enacted a statutory target in 2020 to achieve net-zero GHG emissions across all sectors by 2045.¹¹⁵

3. Alternatives

64. As part of the NEPA analysis, the final EIS evaluated a reasonable range of alternatives to the project.¹¹⁶ The alternatives considered were a no-action alternative, system alternatives, and alternative locations for Compressor Station 168. In relevant part, the EIS evaluated modifying Transco's existing Compressor Station 167 as an alternative to building new Compressor Station 168. Under this alternative, Transco would modify Compressor Station 167 by retiring two existing 7,800-hp gas-fired compressor units and installing two 22,500-hp EMD compressor units. While the EIS acknowledged that conversion of Compressor Station 167 from gas-fired to electric motor-driven compression may reduce air emission impacts on nearby environmental justice communities, the EIS ultimately concluded that the Compressor Station 167 alternative did not offer significant environmental advantages when compared to the proposed location for Compressor Station 168.¹¹⁷

65. Sierra Club argues that the conclusion in the Final EIS that the Compressor Station 167 alternative would not offer significant environmental advantages over Compressor Station 168 is contrary to the evidence in the record.¹¹⁸ Sierra Club asserts that the EIS failed to discuss all of Compressor Station 167's current pollutants and only analyzed volatile organic compounds (VOC) and hazardous air pollutants (HAP) and obscured or understated the benefits of retiring the gas compressor units. Sierra Club also argues that there is insufficient information in the record to meaningfully consider the Compressor Station 167 alternative because the Commission failed to conduct outreach to the environmental justice communities near the station and there is inadequate information about the alternative's impacts to land use and wildlife.

66. The Compressor Station 167 alternative would temporarily impact 20.7 acres of forested land and 9.7 acres of open/developed land and permanently convert 9.1 acres of forest land to developed land.¹¹⁹ Approximately 11.6 acres of cleared forest would be

¹¹⁵ *U.S. State Greenhouse Gas Emissions Targets, Virginia*
<https://www.c2es.org/document/greenhouse-gas-emissions-targets/> (accessed Sept. 26, 2022).

¹¹⁶ Final EIS at 3-1.

¹¹⁷ *Id.* at 3-5, 3-9.

¹¹⁸ Sierra Club Final EIS Comment at 1.

¹¹⁹ Final EIS at 3-4 to 3-5.

allowed to return to its preconstruction condition, although regeneration would be long-term, taking decades.¹²⁰ Construction of Compressor Station 168 would impact 40.4 acres of pasture, 6.7 acres of forest, 3.3 acres of residential land,¹²¹ 2.2 acres of open land, 0.7 acre of roadway, and 0.5 acre of agricultural land.¹²² Approximately 14.9 acres of Compressor Station 168 would be maintained as graveled area, housing the proposed compressor station and associated ancillary facilities, access roads, staging areas, and substation features.¹²³ The remaining acreage would be restored following construction activities and would consist of non-impervious areas and used for stormwater management or would be restored and vegetated.¹²⁴

67. The Compressor Station 167 alternative would require expansion into riparian forest adjacent to Smith Creek, which is less than 600 feet from the existing station fence line.¹²⁵ The temporary workspace required to expand Compressor Station 167 abuts Smith Creek and would require clearing approximately 20 acres of forested habitat upgradient that is immediately adjacent to the creek resulting in long-term direct impacts on the riparian corridor of Smith Creek, as well as potential indirect impacts on Smith Creek. By comparison, the forested impacts associated with the proposed Compressor Station 168 are limited to isolated woodlots and hedgerows, instead developing areas previously used for agricultural purposes. In addition, two mapped National Wetland Inventory wetlands along the west bank/floodplain of Smith Creek are within the temporary workspace of the Compressor Station 167 alternative (0.3 acre of a freshwater scrub-shrub wetland with forested cover and 0.7 acre of an emergent wetland), which would result in a temporary direct impact.¹²⁶ Based on U.S. Geological Survey mapping and aerial photographs, it appears that the channel of Smith Creek and two unmapped tributaries may be within the temporary workspace required to expand Compressor Station 167. By comparison, construction of Compressor Station 168 would have no impact on wetlands or waterbodies.

¹²⁰ *Id.*

¹²¹ Transco has already acquired the residences within Compressor Station 168 for use as office space during construction and operation of the compressor station facilities.

¹²² *Id.* at 3-4 to 3-5

¹²³ *Id.* at 3-5.

¹²⁴ *Id.*

¹²⁵ *Id.* at 3-6.

¹²⁶ *Id.* at 3-7.

68. Both Compressor Station 167 and 168 are within an environmental justice community.¹²⁷ Eight homes are within 1,000 feet of Compressor Station 167 along Chaptico Road, and 38 homes are within 0.5 mile, compared to 8 homes within 0.5 mile of the proposed Compressor Station 168 site and two homes within 1,000 feet of proposed Compressor Station 168. While temporary impacts from construction activities at Compressor Station 167 would impact a greater number of residences nearby, conversion of this station from natural-gas fired compression to electric motor-driven compression may reduce air emission impacts on these residences.

69. In response to Sierra Club's assertion that the EIS failed to discuss all of Compressor Station 167's current pollutants and only analyzed VOCs and HAPs while obscuring or understating the benefits of retiring the gas compressor units, we note that Sierra Club provides the 2021 emissions for Compressor Station 167 as obtained from the state (which include 4.8 tons per year [tpy] of nitrogen oxides [NO_x], 0.5 tpy VOCs, 1.7 tpy carbon monoxide [CO], 0.03 tpy of sulfur dioxide [SO₂], and 0.07 tpy of particulate matter of size 10 microns or less [PM_{2.5}]).¹²⁸ As stated in the EIS, Compressor Station 168 would emit up to 1.96 tpy NO_x, 1.8 tpy VOCs, 3.9 tpy CO, 0.01 tpy SO₂, and 0.04 tpy PM₁₀.¹²⁹ The actual emissions from the existing Compressor Station 167 during recent years and the proposed operational emissions from Compressor Station 168 (which are assumed to be equivalent to the Compressor Station 167 site alternative) are similar in scope and magnitude and would likely result in similar impacts to air quality in the vicinity of Compressor Station 167.¹³⁰

70. As explained in the final EIS, adding compression at Compressor Station 167 produces less hydraulic efficiency for the system than placing compression at the proposed Compressor Station 168 location.¹³¹ The Compressor Station 167 alternative requires more horsepower (45,000 hp from two 22,500-hp units compared to a single 33,000-hp compressor at the Compressor Station 168 location) due to the increased distance from the nearest upstream station. Operation of the Compressor Station 167 alternative would result in additional noise impacts due to higher volumes of gas being compressed by the expanded station.

¹²⁷ *Id.* at 3-5.

¹²⁸ Sierra Club Final EIS Comment at 3.

¹²⁹ Final EIS at 4-90.

¹³⁰ *Id.* at 3-5 to 3-6.

¹³¹ *Id.* at 3-6.

71. In addition, the existing electric line cannot supply the necessary electric power to the Compressor Station 167 alternative. Thus, the alternative would require replacement of 26.5 miles of existing transmission line or construction of 18.8 miles of new transmission line, and 0.7 mile of new electric distribution line, and would affect multiple property owners along the lines' path.

72. With respect to Sierra Club's statement that the Commission failed to conduct outreach to the environmental justice communities near Compressor Station 167, all notices issued for the project were mailed to over 150 organizations, schools, churches, community centers, restaurants, and businesses to notify the nearby environmental justice communities. In addition, notices were mailed to one library and two newspapers in South Hill, where Compressor Station 167 is located.

73. We agree with Commission staff's analysis in the Final EIS that the Compressor Station 167 alternative would not offer significant environmental advantages over the proposed project. While the Commission is required to present environmental impacts of the proposal and alternatives in comparative form and rigorously explore and objectively evaluate all reasonable alternatives,¹³² this requirement "does not require assessing each alternative under identical criteria."¹³³ Further, the Commission "need not provide the same level of detailed analysis for each alternative that it provides for the action under review."¹³⁴ Here, Commission staff analyzed emissions impacts from both the proposed project and the alternative and found that despite the positive emissions impacts from the alternative, the alternative's other negative impacts on forested land, wetland and waterbodies, noise, nearby residences, and electric transmission replacement did not warrant analyzing the alternative further, including further comparing air emissions data or analyzing impacts to land use and wildlife.¹³⁵

4. Environmental Impacts Conclusion

74. We have reviewed the information and analysis contained in the final EIS, as well as the other information in the record, regarding potential environmental effects of the project. We are accepting the environmental recommendations in the final EIS and are including them as conditions in the appendix to this order. Based on our consideration of this information, as supplemented or clarified by the discussion above, we agree with the

¹³² 40 C.F.R. § 1502.14(a) (2022).

¹³³ *Ctr. for Biological Diversity*, slip op. at 8.

¹³⁴ *Id.*

¹³⁵ Final EIS at 3-7.

conclusions presented in the final EIS and find that the project, if implemented as described in the final EIS, is an environmentally acceptable action.

75. We note that the analysis in the final EIS provides substantial evidence for our conclusions in this order, but that it is the order itself that serves as the record of decision, consistent with the Commission's obligations under NEPA and the Administrative Procedure Act. For that reason, to the extent that any of the analysis in the final EIS is inconsistent with or modified by the Commission's analysis and findings in the order, it is the order that controls and we do not rely on or adopt any contrary analysis in the final EIS.

IV. Conclusion

76. The proposed project will enable Transco to provide an additional 423,400 Dth/d of firm transportation service, 100% of the project's capacity, to Piedmont. We find that Transco has demonstrated a need for the Southside Reliability Enhancement Project, that the project will not have adverse economic impacts on existing shippers or other pipelines and their existing customers, and that the project's benefits will outweigh any adverse impacts on landowners and surrounding communities. We have analyzed the technical aspects of the project and conclude that it has been appropriately designed to achieve its intended purpose. Based on the discussion above, we find under section 7 of the NGA that the public convenience and necessity requires approval of the Southside Reliability Enhancement Project, subject to the conditions in this order.

77. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when staff is satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

78. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹³⁶

79. At a hearing held on July 27, 2023, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and all comments, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Transco to construct and operate the Southside Reliability Enhancement Project, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) The certificate issued in Ordering Paragraph (A) is conditioned on Transco's:

- (1) completion of the construction of the proposed facilities and making them available for service within two years of the date of this order, pursuant to section 157.20(b) of the Commission's regulations;
- (2) compliance with all applicable Commission's regulations, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) compliance with the environmental conditions listed in the appendix of this order; and
- (4) making a filing affirming that Transco has executed a firm service agreement for volumes and service terms equivalent to those in the precedent agreement before commencing construction.

¹³⁶ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

(C) Transco shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(D) Transco's proposed incremental firm recourse reservation charge and usage charge under Rate Schedule FT are approved as the initial recourse charges for the project.

(E) Transco's proposal to charge its generally applicable system fuel percentage and system electric power rates to recover fuel and electric power costs associated with the project is approved.

By the Commission. Chairman Phillips and Commissioner Christie are concurring with a joint separate statement attached.

Commissioner Danly is dissenting in part with a separate statement attached.

Commissioner Clements is concurring with a separate statement attached.

Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Environmental Conditions

As recommended in the final environmental impact statement (EIS), this authorization includes the following conditions.

1. Transcontinental Gas Pipe Line, LLC (Transco) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EIS, unless modified by the Order. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP), or the Director's designee, **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the Southside Reliability Enhancement Project (Project). This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from Project construction and operation.
3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of**

construction, Transco shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Transco's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Transco's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Transco shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP, or the Director's designee, **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, Transco shall file an Implementation Plan with the Secretary for review

and written approval by the Director of OEP, or the Director's designee. Transco must file revisions to the plan as schedules change. The plan shall identify:

- a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EIS, and required by the Order;
 - b. how Transco will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Transco will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - f. the company personnel (if known) and specific portion of Transco's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Transco will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Transco shall employ at least one EI for the Project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports with the Secretary on a **biweekly** basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Transco's efforts to obtain the necessary federal authorizations;
 - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning instances of noncompliance, and Transco's response.
9. Transco shall develop and implement an environmental complaint resolution procedure, and file such procedure with the Secretary, for review and approval by the Director of OEP, or the Director's designee. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the Project and restoration of the right-of-way. Prior to construction, Transco shall mail the complaint procedures to each landowner whose property will be crossed by the Project.
- a. In its letter to affected landowners, Transco shall:

- i. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - ii. instruct the landowners that if they are not satisfied with the response, they should call Transco's Hotline; the letter should indicate how soon to expect a response; and
 - iii. instruct the landowners that if they are still not satisfied with the response from Transco's Hotline, they should contact the Commission's Landowner Helpline at 877-337-2237 or at LandownerHelp@ferc.gov.
 - b. In addition, Transco shall include in its **biweekly** status report a copy of a table that contains the following information for each problem/concern:
 - i. the identity of the caller and date of the call;
 - ii. the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
 - iii. a description of the problem/concern; and
 - iv. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
10. Transco must receive written authorization from the Director of OEP, or the Director's designee, **before commencing construction of any Project facilities**. To obtain such authorization, Transco must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
11. Transco must receive written authorization from the Director of OEP, or the Director's designee, **before placing the Project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the Project are proceeding satisfactorily.
12. **Within 30 days of placing the authorized facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order Transco has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

13. Transco shall file a noise survey with the Secretary **no later than 60 days** after placing each of the new or modified aboveground facilities (Compressor Station 168, Compressor Station 166, and the Pleasant Hill Meter Station) in service. If a full-load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible horsepower load for the compressor stations and maximum flow for the meter station and provide the full load survey **within six months**. If the noise attributable to the operation of all of the equipment at Compressor Station 168, Compressor Station 166 (including Compressor Station 165), or the Pleasant Hill Meter Station under interim or full horsepower load or maximum flow conditions exceeds a day/night noise level of 55 decibels on the A-weighted scale at any nearby noise sensitive areas, Transco shall file a report on what changes are needed and should install the additional noise controls to meet the level **within one year** of the in-service date. Transco shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-461-000

(Issued July 31, 2023)

PHILLIPS, Chairman and CHRISTIE, Commissioner, *concurring*:

1. We concur in today's order, which authorizes the construction of a vitally needed project that will serve residential and industrial consumers, as well as hospitals and military bases. In *Driftwood Pipeline LLC*, we reached a compromise regarding the appropriate consideration and evaluation of downstream greenhouse gas (GHG) emissions and whether and how the significance of such emissions could be determined. This compromise language adopted in *Driftwood* is legally sound and allows the Commission to approve needed natural gas infrastructure projects when we may disagree on other aspects of the NEPA requirements with regard to GHGs.¹

¹ *Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61-63 (2023) (*Driftwood*) ("For informational purposes, we are disclosing Commission staff's revised estimate of the social cost of GHGs associated with the reasonably foreseeable emissions from the Line 200 and Line 300 Project. While we have recognized in some past orders that social cost of GHGs may have utility in certain contexts such as rulemakings, we have also found that calculating the social cost of GHGs does not enable the Commission to determine credibly whether the reasonably foreseeable GHG emissions associated with a project are significant or not significant in terms of their impact on global climate change. Currently, however, there are no criteria to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria. Nor are we aware of any other currently scientifically accepted method that would enable the Commission to determine the significance of reasonably foreseeable GHG emissions. The DC Circuit has repeatedly upheld the Commission's decisions not to use the SCC, including to assess significance . . . The Commission has disclosed the project's reasonably foreseeable GHG emissions above. By adopting the analysis in the EIS, we recognize that the project's contributions to GHG emissions globally contribute incrementally to future climate change impacts, including impacts in the region. We note that there currently are no accepted tools or methods for the Commission to use to determine significance, therefore the Commission is not herein characterizing these emissions as significant or insignificant. Accordingly, we have taken the required "hard look" and have satisfied our obligations under NEPA.")

2. We continue to believe that the *Driftwood* compromise represents a prudent path forward for resolving these issues. However, for the compelling purpose of moving this needed project forward, we will support the alternative approach in today's order, which moves the *Driftwood* language—for purposes of this order—to this Joint Concurrence.

3. That being said, for illustrative purposes, we outline below generally how we would apply the *Driftwood* compromise to the facts of this case

4. For informational purposes, the EIS includes an estimate of the social cost of GHGs from construction, operation and downstream emissions.² While we have recognized in some past orders that the social cost of GHGs may have utility in certain contexts such as rulemakings,³ we have also found that calculating the social cost of GHGs does not enable the Commission to determine credibly whether the reasonably foreseeable GHG emissions associated with a project are significant or not significant in terms of their impact on global climate change.⁴ Currently, however, there are no criteria to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria.⁵ Nor are we aware of any other currently scientifically accepted method that would enable the Commission to determine the significance of reasonably foreseeable GHG emissions.⁶ The D.C. Circuit has

² EIS at 4-120.

³ *Fla. Se. Connection, LLC*, 164 FERC ¶ 61,099, at PP 35-37 (2018).

⁴ *See Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 296 (2017), *aff'd sub nom.*, *Appalachian Voices v. FERC*, 2019 WL 847199 (D.C. Cir. 2019); *Del. Riverkeeper v. FERC*, 45 F.4th 104, 111 (D.C. Cir. 2022). The social cost of GHGs tool merely converts GHG emissions estimates into a range of dollar-denominated figures; it does not, in itself, provide a mechanism or standard for judging “significance.”

⁵ *Tenn. Gas Pipeline Co., L.L.C.*, 181 FERC ¶ 61,051 at P 37; *see also Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 296, *order on reh'g*, 163 FERC ¶ 61,197, at PP 275-297 (2018), *aff'd*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at 2 (D.C. Cir. Feb. 19, 2019) (unpublished) (“[The Commission] gave several reasons why it believed petitioners’ preferred metric, the Social Cost of Carbon tool, is not an appropriate measure of project-level climate change impacts and their significance under NEPA or the Natural Gas Act. That is all that is required for NEPA purposes.”); *EarthReports v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016) (accepting the Commission’s explanation why the social cost of carbon tool would not be appropriate or informative for project-specific review, including because “there are no established criteria identifying the monetized values that are to be considered significant for NEPA purposes”); *Tenn. Gas Pipeline Co., L.L.C.*, 180 FERC ¶ 61,205, at P 75 (2022); *See, e.g., LA Storage, LLC*, 182 FERC ¶ 61,026, at P 14 (2023); *Columbia Gulf Transmission, LLC*, 180 FERC ¶ 61,206, at P 91 (2022).

⁶ *See, e.g., LA Storage, LLC*, 182 FERC ¶ 61,026 at P 14 (“there are currently no criteria

repeatedly upheld the Commission’s decisions not to use the social cost of carbon, including to assess significance.⁷ In fact, the D.C. Circuit recently affirmed the Commission’s decision not to analyze the social cost of carbon in its NEPA analysis,⁸ rejected the suggestion that it was required to do so, found that the petitioner’s arguments “fare no better when framed as NGA challenges,” and then, in the very same paragraph, sustained the Commission’s public interest determination as “reasonable and lawful.”⁹

5. The *Driftwood* language provides an appropriate compromise way to go forward in future orders in evaluation of the downstream impact of GHG emissions.

to identify what monetized values are significant for NEPA purposes, and we are currently unable to identify any such appropriate criteria”)

⁷ See, e.g., *Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1184 (D.C. Cir. 2023) (explaining that “the Commission compared the Project’s direct emissions with existing Alaskan and nationwide emissions,” “declined to apply the social cost of carbon for the same reasons it had given in a previous order”; describing those reasons as (1) “the lack of consensus about how to apply the social cost of carbon on a long time horizon,” (2) that “the social cost of carbon places a dollar value on carbon emissions but does not measure environmental impacts as such,” and (3) “FERC has no established criteria for translating these dollar values into an assessment of environmental impacts”; and recognizing that the Commission’s “approach was reasonable and mirrors analysis . . . previously upheld” and that the Commission “had no obligation in this case to consider the social cost of carbon”) (citations omitted) (*Alaska LNG*); *EarthReports*, 828 F.3d at 956 (upholding the Commission’s decision not to use the social cost of carbon tool due to a lack of standardized criteria or methodologies, among other things); *Del. Riverkeeper v. FERC*, 45 F.4th 104 (also upholding the Commission’s decision not to use the social cost of carbon); *Appalachian Voices v. FERC*, 2019 WL 847199 (D.C. Cir. 2019) (same).

⁸ *Alaska LNG*, 67 F.4th at 1184 (“Rather than use the social cost of carbon, the Commission compared the Project’s direct emissions with existing Alaskan and nationwide emissions. It declined to apply the social cost of carbon for the same reasons it had given in a previous order. . . FERC’s approach was reasonable and mirrors analysis we have previously upheld.”).

⁹ *Id.*

For these reasons, we respectfully concur.

Willie L. Phillips
Chairman

Mark C. Christie
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-461-000

(Issued July 31, 2023)

DANLY, Commissioner, *dissenting in part*:

1. I agree with the Commission’s decision to grant Transcontinental Gas Pipe Line Company, LLC (Transco) an authorization under section 7(c) of the Natural Gas Act (NGA)¹ to construct and operate the Southside Reliability Enhancement Project in Mecklenburg and Pittsylvania Counties, Virginia, and Davidson County, North Carolina. The need for the project is amply demonstrated by the long-term precedent agreement with Piedmont Natural Gas Company, Inc. for 100% of the project’s firm transportation service.

2. I am, however, compelled to dissent in part. This order suffers a number of crippling infirmities: it *intentionally* disregards a recent Congressional enactment, it violates the Administrative Procedure Act (APA), is inconsistent with Supreme Court precedent regarding the implementation of the National Environmental Policy Act (NEPA), and it unjustifiably abandons recent Commission practice in our treatment of the social cost of greenhouse gases (GHGs).

I. My Colleagues Intentionally Disregard the Builder Act

3. Congress recently passed the *Fiscal Responsibility Act of 2023*, which included the Builder Act,² thereby amending NEPA for the first time since its enactment in 1970. Several of the amendments directly implicate this proceeding’s final Environmental Impact Statement (EIS). Among the Builder Act’s other modifications, it requires agencies to include the following in NEPA documents:

(i) reasonably foreseeable environmental effects of the proposed agency action;

(ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be

¹ 15 U.S.C. § 717f(c).

² See *Fiscal Responsibility Act of 2023*, Pub. L. No. 118-5, 137 Stat. 10, at § 321 (2023) (providing the “Builder Act”).

implemented;

(iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.³

My colleagues, however, declined to acknowledge this enactment or even quote the statute, *i.e.*, NEPA. Regardless of how the Commission ultimately chooses to implement the Builder Act, the simple fact is this: the law has changed, Congress has made its decision, and we must comply with it even if my colleagues do not like it. We cannot skirt our obligation to follow the law by pretending it does not exist.

II. This Order Violates the APA

4. The Commission is obligated under the APA to engage in reasoned decision making. It is black letter law that reasoned decision making requires responding to the substance raised in litigants' submissions. This order disregards the full scope of the comments from the Environmental Protection Agency (EPA) and ignores record evidence that estimating downstream GHG emissions based on a full burn calculation cannot accurately determine reasonably foreseeable GHG emissions.

5. On April 3, 2023, the EPA filed comments asserting that the Commission's disclosure of GHG emissions was incomplete because the Commission did not estimate the upstream emissions, arguing that the Commission "can create a general conservative estimate based on national averages for similar projects utilizing the Inventory of U.S. Greenhouse Gas Emissions and Sinks (GHG Inventory) and EPA's GHG Reporting Program," stating that "[i]t would be appropriate for the project to include, for reference, the total project upstream GHG emissions," and also asserting that doing the foregoing "would be consistent with the Council on Environmental Quality's [(CEQ)] current

³ 42 U.S.C. § 4332(c)(i).

position as expressed in the preamble to their January 9, 2023, notice of interim guidance ‘Consideration of Greenhouse Gas Emissions and Climate Change.’”⁴

6. The Commission’s order makes no mention of the argument that the Commission should calculate upstream GHG emissions because it would be consistent with CEQ’s Interim Guidance.⁵ Instead, the order baldly recites the fact that the comments were filed and summarizes the subject matter: that the Commission “received comments on the final EIS from the EPA regarding upstream GHG emissions”⁶ and that “EPA assert[s] that upstream emissions are reasonably foreseeable, and that the Commission should include upstream emissions in its social cost of GHGs calculations.”⁷ The Commission then correctly “find[s] that the upstream emissions are not reasonably foreseeable effects of the proposed project.”⁸ There is no mention, however, of the CEQ Interim Guidance anywhere in the order. Why would my colleagues refuse to even acknowledge EPA’s argument that we should calculate upstream GHG emissions in order to be consistent with CEQ’s Interim Guidance? Perhaps because my colleagues are reluctant to declare that we are declining to implement CEQ’s non-binding guidance. We are required under the APA to respond even when, as here, it is unlikely that a sister agency would pursue a petition for review.⁹ Since the order declines to do so, I will provide the necessary response. As CEQ acknowledges, the “guidance does not change or substitute for any law, regulation, or other legally binding requirement, and is not legally enforceable.”¹⁰ The Commission did not apply the CEQ Interim Guidance. The Commission is not required to do so because it is non-binding and we have repeatedly explained why upstream GHG emissions are not reasonably foreseeable. Furthermore upstream

⁴ EPA April 3, 2023 Comments at 2 (citations omitted).

⁵ See *Nat’l Env’t Policy Act Guidance on Consideration of Greenhouse Gas Emissions & Climate Change*, 88 Fed. Reg. 1196 (Jan. 9, 2023) (CEQ Interim Guidance).

⁶ *Transco. Gas Pipe Line Co., LLC*, 184 FERC ¶ 61,066 at P 30 (citation omitted) (*Transco*).

⁷ *Id.* P 54 (citation omitted).

⁸ *Id.* P 56.

⁹ See *New England Power Generators Ass’n, Inc. v. FERC*, 881 F.3d 202, 211 (D.C. Cir. 2018) (finding “that FERC did not engage in the reasoned decisionmaking required by the Administrative Procedure Act” because it “failed to respond to the substantial arguments put forward by Petitioners and failed to square its decision with its past precedent”).

¹⁰ 88 Fed. Reg. at 1197 n.4.

production and gathering are outside the Commission’s jurisdiction and there are recent legislative enactments that now supersede CEQ’s Interim Guidance.¹¹

7. More troubling than our refusal to acknowledge, let alone respond to, EPA’s comments is my colleagues’ insistence that all downstream emissions from local distribution companies (LDCs) are reasonably foreseeable, even when, as in this case, we are presented with seemingly un rebutted record evidence to the contrary. This is an obvious failure under the APA. An agency’s decision is

arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, *offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.*¹²

The Commission “must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”¹³ The Commission must also base its decisions on substantial record evidence. Substantial evidence means “more than a mere scintilla,” that is, “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁴

8. Today’s order finds that the downstream emissions from the Southside Reliability Enhancement Project, based upon a full burn calculation, are reasonably foreseeable¹⁵

¹¹ See Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat 10, at § 321 (providing the “Builder Act”); *see also* 42 U.S.C. § 4332(c) (listing what should be included in “a detailed statement” “except where compliance would be inconsistent with other statutory requirements”).

¹² *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (emphasis added).

¹³ *Id.* at 43 (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1962)); *see also id.* at 56 (“failed to offer the rational connection between facts and judgment required to pass muster under the ‘arbitrary and capricious’ standard”).

¹⁴ *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938).

¹⁵ *Transco*, 184 FERC ¶ 61,066 at PP 52-53 (“For the Southside Reliability Enhancement Project, we find that the construction emissions direct operational emissions and downstream emissions are reasonably foreseeable With respect to

and notes that the final EIS calculated the downstream emissions based on a full burn of the project's design capacity.¹⁶ Buried in a footnote, and as a second disclosure in addition to the full burn calculation, the Commission states that "Transco urges the Commission to estimate the potential downstream GHG emissions using the projected utilization rate of 38.6%" and then provides a calculation based on 38.6% utilization of the downstream end-use, but notes that the Commission provides the estimate "for informational purposes."¹⁷ Nowhere in this discussion does the Commission explain why it finds that the full burn calculation is an accurate basis upon which to estimate reasonably foreseeable downstream emissions, even though it is in receipt of directly contradictory evidence. Specifically, in Transco's application, it explained that "[b]ased on a 35-year projection for design day forecasting for Piedmont, the forecasted average annual capacity factor of gas consumed is approximately 38.6 percent (or an annual average of 61,748 Dth/d)" and Transco goes on to state that "[u]sing a 'full burn' scenario is a grossly inaccurate approach to measuring the downstream GHG impacts of a pipeline project."¹⁸ The Commission appears to be establishing a new policy, *sub silentio*, in which, for LDC shippers, the Commission will find, as a categorical matter, and even in the face of contrary record evidence, that a full burn calculation can be used

downstream emissions, the final EIS calculated . . . a full-burn of the project's design capacity . . . ") (citations omitted).

¹⁶ *Id.* P 53.

¹⁷ *Id.* P 53 n.91.

¹⁸ Transco Application, Resource Report No. 9, at 9-33 & n.12.

to estimate reasonably foreseeable downstream emissions.¹⁹ This is bad policy and it is also a violation of the APA.²⁰

III. The Downstream Emissions are Not Reasonably Foreseeable Under NEPA

9. Not only is the failure to respond to the applicant's arguments a violation of the APA, but the Commission is also factually incorrect when it finds that the downstream emissions are reasonably foreseeable. As in *Food & Water Watch v. FERC*,²¹ this case involves adding capacity to provide incremental transportation service to a LDC shipper.²² In *Food & Water Watch*, the court did conclude "that the end use of the

¹⁹ Cf. *Tenn. Gas Pipeline Co., L.L.C.*, 179 FERC ¶ 61,041, at PP 49-51 (2022) ("For the proposed project, we find that the construction emissions, direct operational emissions, and the emissions from the downstream combustion of the gas transported by the project are reasonably foreseeable emissions. With respect to downstream emissions, the record in this proceeding demonstrates that the natural gas to be transported by the project will be combusted by end-use customers. . . . With respect to downstream emissions, the EIS calculates a full-burn of the project's design capacity would result in 2.22 million metric tpy of CO₂e. However, Tennessee urges the Commission to estimate the potential downstream GHG emissions using the 'average utilization rate' in the relevant market area on Tennessee's system, Zone 5, which Tennessee states has a 77% utilization rate. We decline to accept Tennessee's 77% average utilization rate without additional substantiation, especially in light of the contradictory 85% historical utilization rate provided in Tennessee's application used to support its proposed commodity charge. Based on an assumed 85% utilization rate, the estimated GHG emissions related to the downstream use of the incremental capacity provided by the project is approximately 1,887,000 metric tpy.").

²⁰ It is beyond cavil that an agency must explain its departure from prior precedent and "may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("[T]he requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position.") (emphasis in original) (citation omitted).

²¹ 28 F.4th 277 (D.C. Cir. 2022) (*Food & Water Watch*).

²² "Piedmont, a wholly owned subsidiary of Duke Energy Corporation, is a local distribution company that transports, distributes, and sells natural gas to consumers in North Carolina, South Carolina, and Tennessee." *Transco*, 184 FERC ¶ 61,066 at P 5 n.6.

transported gas is reasonably foreseeable”²³ but went on to state that “[o]n remand, *the Commission remains free to consider whether there is a reasonable end-use distinction* based on additional evidence, but it has not carried its burden before us at this stage,” and the court explained that it “remand[ed] to the agency to perform a supplemental environmental assessment in which it must either quantify and consider the project’s downstream carbon emissions *or explain in more detail why it cannot do so.*”²⁴ We have not yet acted on the *Food & Water Watch* remand and, even according to the court, the question remains open. This case has record evidence of the very type described by the court and there are explanations that the Commission can rely on to provide “a reasonable end-use distinction”²⁵ when the shippers are LDCs.²⁶

²³ 28 F.4th at 289.

²⁴ *Id.* (emphasis added).

²⁵ *Id.*

²⁶ The LDC at issue here and the discrete, known generators in *Sierra Club v. FERC*, are dissimilar enough that the *Sabal Trail* precedent cannot directly apply. 867 F.3d 1357 (D.C. Cir. 2017) (*Sabal Trail*). Additionally, as I have said before, *Sabal Trail*, which *Food & Water Watch* applies, is inconsistent with the Supreme Court’s holding in *Public Citizen*, 541 U.S. at 767 (“NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause. The Court analogized this requirement to the ‘familiar doctrine of proximate cause from tort law.’”) (citation omitted); *see id.* at 770 (holding that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect” and “under NEPA and the implementing CEQ regulations, the agency need not consider these effects in its [Environmental Assessment (EA)] when determining whether its action is a ‘major Federal action.’”). My views are not idiosyncratic. Both the partial dissenting statement in *Sabal Trail* and the Court of Appeals for the Eleventh Circuit agree. *See* 867 F.3d at 1383 (Brown, J., concurring in part and dissenting in part) (“Thus, just as FERC in the [Department of Energy (DOE)] cases and the Federal Motor Carrier Safety Administration in *Public Citizen* did not have the legal power to prevent certain environmental effects, the Commission here has no authority to prevent the emission of greenhouse gases through newly-constructed or expanded power plants approved by the Board.”); *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’rs*, 941 F.3d 1288, 1300 (11th Cir. 2019) (“[T]he legal analysis in *Sabal Trail* is questionable at best. It fails to take seriously the rule of reason announced in *Public Citizen* or to account for the untenable consequences of its decision.”). Moreover, as I have previously explained, we could no more reasonably deny a pipeline for the effects of induced upstream production, which the statute places outside our jurisdiction, than we could

deny an NGA section 3 authorization, 15 U.S.C. § 717b, for an LNG export terminal because we do not like the effects that the expected exports would have on international gas markets. *Transcon. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,148 (2023) (Daly, Comm’r, concurring at P 5) (citing *Port Arthur LNG, LLC*, 181 FERC ¶ 61,024, at P 12 & n.35 (2022) (stating in an extension of time proceeding that “[t]he Commission will not consider Sierra Club’s assertion that we must examine the project’s impact on domestic prices and supply as it is an attempt to re-litigate the issuance of the Authorization Order” and that “[n]or could we consider impacts on domestic prices and supply as the Commission’s authority under the Natural Gas Act is limited to the authorization of the siting, construction, and operation of LNG export facilities, while *the consideration of the impact of export of LNG as a commodity is solely under the Department of Energy’s authority*”) (emphasis added) (citation omitted); *Commonwealth LNG, LLC*, 181 FERC ¶ 61,143, at P 13 (2022) (“The Commission’s authority under NGA section 3 applies ‘only to the siting and the operation of the facilities necessary to accomplish an export[,]’ while ‘export decisions [are] squarely and exclusively within the [DOE]’s wheelhouse.’ Similarly, issues related to the impacts of natural gas development and production are related to DOE’s authorization of the export and not the Commission’s siting of the facilities”) (citations omitted); *Columbia Gulf Transmission, LLC*, 180 FERC ¶ 61,206, at PP 78, 80 (2022) (explaining for a NGA section 7 project that would provide incremental firm interstate natural gas transportation service to an LNG export facility that “the downstream GHG emissions are attributable to DOE’s ‘independent decision to allow exports—a decision over which the Commission has no regulatory authority’” and that “[w]e see no basis in the NGA for the Commission to encroach upon DOE’s sole authority over the review and authorization of exports of natural gas”); *Tenn. Gas Pipeline Co., L.L.C.*, 180 FERC ¶ 61,205, at PP 62, 64 (2022) (same)). That determination rests solely with the DOE, which is charged with authorizing “the export of natural gas as a commodity.” *EarthReports, Inc. v. FERC*, 828 F.3d 949, 952-53 (D.C. Cir. 2016) (explaining that the DOE has “exclusive authority over the export of natural gas as a commodity”). The same holds for any induced upstream effects on production, even if they *could* be found traceable to the proposed project. In my view, this also applies to downstream end use, such as local distribution. The statute reserves those powers to the states. And it does so explicitly:

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local

10. It is impossible to find any LDC's downstream GHG emissions reasonably foreseeable based on a full burn calculation. Suggestions to the contrary demonstrate a total misunderstanding of how LDCs work and ignores the basis upon which LDCs contract for capacity.²⁷ As the applicant argued, an estimate based on a 100% utilization rate (a "full burn" calculation), *i.e.*, assuming that the maximum capacity is transported 365 days per year, 24 hours a day, and fully combusted downstream), necessarily overestimates downstream emissions. Residential and commercial demand for natural gas is highly dependent upon weather. No LDC expects contracted capacity to match actual utilization rates. Typically, LDCs do not contract for capacity to meet routine needs but instead, because of their legal obligation to serve their customers at all times, under all conditions, they instead contract to meet *peak demand*.²⁸ They also contract for

distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

15 U.S.C. § 717(b).

²⁷ As an aside, were the Commission to find that downstream GHG emissions are not reasonably foreseeable or otherwise depart from using a full burn estimate of downstream GHG emissions such a decision would not undercut the Commission's need determination. Any suggestion along those lines is ridiculous. Here, we have a project that has significant evidence of need demonstrated by a long-term precedent agreement for 100% of the project capacity. The inquiry under NEPA as to whether the downstream GHG emissions are reasonably foreseeable has *nothing* to do with the need inquiry. As the Commission has explained, NEPA and the NGA are distinct. *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173, at P 37 (2023) ("[T]he Commission's NGA and NEPA responsibilities are separate and distinct.") (citation omitted); *Transcon. Gas Pipe Line Co., LLC*, 182 FERC ¶ 61,148 at P 101 ("The NGA analysis is distinct from the NEPA analysis . . .").

²⁸ See Transco July 13, 2022 Answer to Motion to Intervene & Comments of Upstate Forever & Sierra Club at 8 ("The maximum capacity of a pipeline is determined by the pipeline with extensive market analysis of the customers' needs to satisfy the peak demand of the customers. Peak demand occurs during the coldest days of the winter, when heating demand is high, and during the hottest days of the summer, when demand for electricity for cooling is high. The social and environmental costs of failing to meet the demand on these peak days can be significant, even catastrophic."); *see also* Piedmont Natural Gas Co., Inc. June 28, 2022 Motion to Intervene & Comments at 5 ("Because the purpose of the Pine Needle Capacity is to provide Piedmont with gas supply assurance on peak days, it is critical that Piedmont can reliably move its natural gas from Pine Needle to its service territories on the very days that Transco's facilities are being utilized the most heavily. Having the firm service provided by the Mainline Path is even more critical given the increased utilization of Transco's Zone 5 mainline,

peak demand as a hedge in order to avoid having to pay the spot market price in times of scarcity. Such planning is more prudent than having local authorities pinning the reliability of their systems on rain dances and hopes for a mild winter.²⁹

11. The irony, of course, is that we need not get into any of the facts of this, or any other case, in order to decline to assess downstream emissions. In his separate statement, Commissioner Christie points to the limits of our jurisdiction over gathering and production as the basis upon which to find that upstream GHG emissions are not reasonably foreseeable, arguing that upstream activities are non-jurisdictional; therefore, we have no legal obligation to either estimate the upstream GHG emissions nor consider them.³⁰ Completely correct. But the same logic applies to downstream emissions. The Commission has no jurisdiction over the LDCs. Those are licensed and regulated by the states, and we should not consider the Commission to be the legal proximate cause of the emissions of the gas that their consumers may ultimately use.

IV. The Commission has Departed from Recent Practice

12. As they did in *Boardwalk Storage Co., LLC*,³¹ another order voted upon at this month's open meeting, my colleagues backpedal here. *Boardwalk* includes calculations

which has seen secondary and [non-secondary reverse path (NSRP)] constrained on average ninety percent of the year over the past three years. Thus, it is imperative that Piedmont be able to obtain firm transportation capacity under the Project to reliably access its Pine Needle Capacity.”).

²⁹ Cf. *New England's Power Grid Prepared for Winter*, ISO New England (Dec. 5, 2022), https://www.iso-ne.com/static-assets/documents/2022/12/20221205_pr_winteroutlook_final.pdf (“Based on seasonal weather forecasts and information provided by generators about their fuel arrangements, the region’s power system is prepared for mild and moderate weather conditions,” said Gordon van Welie, ISO New England’s president and CEO. “If long periods of severely cold weather develop, we’ll lean on our forecasting tools to identify potential problems early enough to take proactive measures, such as calling for increased fuel deliveries or asking for public conservation.”).

³⁰ See *Transco*, 184 FERC ¶ 61,066 (Christie, Comm’r, concurring at P 2) (“[T]he Commission has no legal obligation to estimate or consider emissions from upstream, non-jurisdictional activities. Further, the Commission has no legal authority whatsoever to order mitigation of such non-jurisdictional upstream activities, much less to consider such non-jurisdictional upstream emissions in our merits review under the Natural Gas Act.”).

³¹ 184 FERC ¶ 61,062 (2023) (*Boardwalk*).

for the social cost of GHGs despite the fact that they are already recited in the staff environmental document.³² As I explain in my concurrence to *Boardwalk*,³³ the inclusion of the calculations in the Commission's order breaks with recent practice. In contrast to all three of my colleagues, I am firm in my view that the calculations should not be reiterated in Commission orders.

13. The abandonment of recent practice goes even further in this order. Here, the Commission omits language that has been included in the Commission's orders since the April 20, 2023 Commission meeting, and which is actually included in the *Boardwalk* order. Specifically, the omitted language states: (1) that the disclosure of the social cost of GHG emissions is "for informational purposes"; (2) that for the social cost of GHGs, "there are no criteria to identify what monetized values are significant for NEPA purposes"; (3) that the Commission is not "aware of any . . . method," including the social cost of GHGs, "that would enable the Commission to determine the significance of reasonably foreseeable GHG emissions"; and (4) that therefore, there are "no accepted tools or methods for the Commission to use to determine significance."³⁴ My colleagues acknowledge that this language is missing from this order in their joint separate statement.³⁵ I disagree with the exclusion of this language. But even if that language had

³² See *id.* P 24; see also *Boardwalk Storage Co., LLC BSC Compression Replacement Project Environmental Assessment*, Docket No. CP22-494-000, at 48-49 (Mar. 13, 2023).

³³ *Boardwalk*, 184 FERC ¶ 61,062 (Danly, Comm'r, concurring).

³⁴ *Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61, 63 (2023) (*Driftwood*); *Tex. LNG Brownsville LLC*, 183 FERC ¶ 61,047, at PP 20-21, 25 (2023); *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046, at PP 92-94, 101 (2023); see also *Tex. LNG Brownsville LLC*, 183 FERC ¶ 61,047 at P 20 ("although we are including the social cost of GHG[s] figures for informational purposes, we find that because the social cost of GHGs tool was not developed for project level review and, as discussed below, does not enable the Commission to credibly determine whether the GHG emissions are significant, section 1502.21 of the CEQ regulations does not require its use in this proceeding"); *Rio Grande LNG, LLC*, 183 FERC ¶ 61,046 at P 92 (same).

³⁵ See *Transco*, 184 FERC ¶ 61,066 (Phillips, Chairman & Christie, Comm'r, concurring). I note that in my colleagues' separate statement, they claim that "[i]n *Driftwood Pipeline LLC*, we reached a compromise regarding the appropriate consideration and evaluation of downstream greenhouse gas (GHG) emissions and whether and how the significance of such emissions could be determined," that "the compromise language . . . allows the Commission to approve needed natural gas infrastructure projects," and that "an appropriate compromise way to go forward in future orders in evaluation of the downstream impact of GHG emissions." *Id.* (Phillips &

been included, I would have been compelled to dissent from that portion of the order because, while that passage would have limited the purposes to which the calculation of the social cost of GHGs would be put to use, it adopts the order's finding that the downstream GHGs are reasonably foreseeable in the face of record evidence to the contrary and despite the Supreme Court's holding in *Public Citizen*.³⁶ I fear new precedent is being set with the exclusion of the language addressing why the Commission can use neither the social cost of GHGs nor any other method to determine the significance of GHG emissions. We shall see what happens in future orders in light of my colleagues' regrettable backpedaling here and in *Boardwalk*.

Christie, Chairman & Comm'r, concurring at PP 1, 5) (emphasis added) (citing *Driftwood*, 183 FERC ¶ 61,049 at PP 61-63). I am not sure what Chairman Phillips and Commissioner Christie mean regarding the *Driftwood* being a "a compromise regarding the appropriate consideration and evaluation of downstream [GHG] emissions and whether and how the significance of such emissions could be determined." *Id.* (Phillips & Christie, Chairman & Comm'r, concurring at P 1). There was no such guidance in *Driftwood* regarding how the Commission evaluates downstream GHG emissions. Instead, the language at issue in *Driftwood* concerned the social cost of GHGs, explaining that the Commission cannot use the social cost of GHGs to assess significance, and the Commission also found that there is no method for the Commission to assess the significance of GHG emissions. Unlike, my colleagues' suggestion, it is not a matter of "whether and how the significance of such emissions could be determined"; rather, the Commission unequivocally states that it cannot determine the significance of GHG emission because there is no means to do so. *See Driftwood*, 183 FERC ¶ 61,049 at P 63 ("We note that there currently are no accepted tools or methods for the Commission to use to determine significance, therefore the Commission is not herein characterizing these emissions as significant or insignificant.") (citation omitted). And it is worth noting that the downstream end use is different in *Driftwood* than this case. As the Commission explained in *Driftwood*, the Line 200 and Line 300 Project will serve power plants and will provide additional supply options for an export facility. *See Driftwood*, 183 FERC ¶ 61,049 at P 27 ("Entergy Louisiana, which is not a shipper on the Mainline System, has indicated that its project capacity will support the resilience and reliability of the natural gas supply plan for its local power plants in the Lake Charles area. And while *Driftwood* LNG has not asserted that there is insufficient supply for its authorized exports, the Line 200 and Line 300 Project would provide the shipper with additional supply options, enhancing the diversity, resilience, and reliability of its supply.") (citation omitted).

³⁶ 541 U.S. 752.

V. Conclusion

14. These certainly are interesting times. Commissioners' positions on fundamental issues change from open meeting to open meeting like the "inconstant moon, [t]hat monthly changes in her circled orb."³⁷ We have witnessed environmental documents including language that runs contrary to Commission orders.³⁸ We have seen the Commission ignore Congressional enactments. We now endure the Commission unwinding recent practice,³⁹ ignoring arguments that it does not want to address,⁴⁰ and selectively omitting language reflecting recent issuances.⁴¹

³⁷ William Shakespeare, *Romeo and Juliet*, act II, scene I (*The Complete Works of William Shakespeare* 255 (Barnes & Noble, Inc. ed., Sterling Publishing Co., Inc. 2015)) (quoting Juliet).

³⁸ Compare WBI Energy Transmission, Inc. Wahpeton Expansion Project Final EIS, Docket No. CP22-466-000, at 4-118 (Apr. 7, 2023) ("The Commission stated in a recent Order that a project's share of contribution to GHG emissions at the national level provides a reasoned basis to consider the significance of the Project's GHG emissions and their potential impact on climate change; and when states have GHG emissions reduction targets, the Commission will endeavor to consider the GHG emissions of a project on those state goals (or state inventories if the state does not have emissions targets.)") (citing *N. Nat. Gas Co.*, 174 FERC ¶ 61,189, at P 29 (2021) (*Northern Natural*)), with *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (2022) (Danly, Comm'r, concurring in the judgment at PP 2-3) (disagreeing with *Northern Natural* and explaining that "there is no standard by which the Commission could, consistent with our obligations under the law, ascribe significance to a particular rate or volume of GHG emissions") (citation omitted), and with *Tenn. Gas Pipeline Co., L.L.C.*, 178 FERC ¶ 61,199 (Phillips & Christie, Comm'rs, concurring at P 2) ("depart[ing] from *Northern Natural*, where the Commission stated that emissions for a project were not significant," explaining that "[i]n *Northern Natural*, the Commission disclosed the yearly emissions volumes and the estimated contribution to national and state emissions estimates, and then stated that, based on this record, that the emissions were not significant," and stating that "[i]t is not clear how this determination was made or how a finding of 'significance' would have affected our duties and authority under the Natural Gas Act") (citations omitted). Compare Boardwalk Storage Co. LLC BSC Compression Replacement Project Environmental Assessment, Docket No. CP22-494-000, at 48 (Mar. 13, 2023) ("We include a disclosure of the social cost of GHGs (also referred to as the [']social cost of carbon' [SCC]) to assess climate impacts generated by each additional metric ton of GHGs emitted by the Project."), with *Golden Pass LNG Terminal LLC*, 180 FERC ¶ 61,058, at P 24 (2022) (rejecting an argument raised in a comment that "the EA should use the social cost of GHGs (also referred to as the 'social cost of carbon' [SCC]) to assess climate impacts generated by each additional ton of GHGs that would be emitted

For these reasons, I respectfully dissent in part.

James P. Danly
Commissioner

or saved as a result of authorizing the proposed amendment, and that all GHG emissions are significant” by explaining that “we are not relying on or using the social cost of GHGs estimates to make any finding or determination regarding either the impact of the project’s GHG emissions or whether the project is in the public convenience and necessity”) (citations omitted). Notably, the Commission does not review or approve the contents of the environmental assessments and environmental impact statements issued by staff. Staff, for those documents, act under the supervision of the Chairman. But great care must be exercised to ensure that environmental documents adhere to Commission precedent. *Cf. Great River Hydropower, LLC*, 135 FERC ¶ 61,151, at P 44 (2011) (explaining that if a delegated order “is inconsistent with [Commission] precedent . . . , it was wrongly decided”). *See also* 42 U.S.C. § 7171(c) (explaining that “[t]he Chairman shall be responsible *on behalf of the Commission* for the executive and administrative operation of the Commission, including functions of the Commission with respect to . . . the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff”) (emphasis added).

³⁹ *See supra* P 12.

⁴⁰ *See supra* PP 5-6; *see, e.g.*, Statement of Commissioner James P. Danly re Texas Gas Transmission, LLC, Docket No. CP21-467-001, at P 9 (June 8, 2023) (“All that was required was a simple response to a simple question: Is the Commission *required* to use the Social Cost of GHGs? The Commission has repeatedly said no. The courts have repeatedly affirmed the Commission. We should have said no (again) and allowed CAC to pursue its appeal with a merits order on rehearing. I must also point out that the notice issued by the Office of the Secretary was not a Commission action. That is to say, it was not issued at the direction of the Commission as a body. Instead, this notice was issued by the Office of the Secretary at the direction of one individual, the Chairman, who, as the executive head of the agency, has, and has exercised, the authority to direct today’s notice unilaterally.”) (emphasis in original) (citation omitted) (Accession No. 20230608-4004).

⁴¹ *See supra* P 13.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-461-000

(Issued July 31, 2023)

CLEMENTS, Commissioner, *concurring*:

1. I concur in today's Order.¹ After weighing the benefits of the Southside Reliability Enhancement Project against its adverse impacts, I conclude that approving the project is in the public interest. In particular, the project will enable Piedmont to provide natural gas service for the benefit of residential and industrial customers, military bases, and hospitals. I write separately to explain the so-called "*Driftwood* compromise" and how the majority has applied it – or not, as in this particular case.² The compromise is not the yellow brick road its authors profess it to be.³ It is instead a blind alley, riddled with analytical potholes that threaten to swallow reasoned decision-making.

2. There was a time the Commission was walking down a reasoned path together with respect to the assessment of greenhouse gas (GHG) emissions. For a period before the issuance of *Driftwood*, the Commission had explained that it was not determining the significance of GHG emissions because the issue of how to do so was under consideration in the docket for the Commission's draft GHG Policy Statement.⁴ In *Driftwood*, the majority order surprisingly switched course, declining to assess the significance of greenhouse gas (GHG) emissions for a very different reason than the Commission had previously articulated. There, the majority language declared that there are no acceptable methods to determine significance, with the Social Cost of GHGs protocol drawing particularly heavy fire.⁵ Although I concurred in the result in that case,

¹ *Transcon. Gas Pipe Line Co.*, 184 FERC ¶ 61,066 (2023) (Order).

² *See id.* (Phillips, Chairman, and Christie, Comm'r, concurring at P 1).

³ *Id.* (Phillips, Chairman, and Christie, Comm'r, concurring at P 2) ("We continue to believe that the *Driftwood* compromise represents a prudent path forward for resolving these issues.").

⁴ *See, e.g., Transcon. Gas Pipe Line Co.*, 182 FERC ¶ 61,006, at P 73 & n.174 (2023); *Columbia Gas Transmission, LLC*, 182 FERC ¶ 61,171, at P 46 & n.93 (2023).

⁵ *See Driftwood Pipeline LLC*, 183 FERC ¶ 61,049, at PP 61, 63 (2023) (*Driftwood*).

I dissented as to this new “compromise” language because the Commission was (1) effectively deciding key issues raised in the GHG Policy Statement docket⁶ without ever having seriously studied those issues, and (2) departing from precedent without reasoned explanation in violation of the Administrative Procedure Act.⁷

3. Following *Driftwood*, the Commission has inserted this so-called compromise language into all of its Natural Gas Act project orders, even in cases where no intervenor or protestor challenged the Commission’s failure to assess GHG significance or argued the Commission should use the Social Cost of GHGs protocol to assess GHG emissions.⁸ In those cases, there is simply no argument to be made that the *Driftwood* compromise language strengthens the order for judicial review or is otherwise useful. I have dissented with respect to the *Driftwood* language in every case it has appeared and for the same reasons every time.⁹

4. That background brings us to the two orders the Commission issues today, here and in *Boardwalk Storage Co., LLC*. In *Boardwalk*, the Commission aimed the *Driftwood* language at our own staff’s underlying environmental assessment (EA) because the EA said that it included a disclosure of the Social Cost of GHGs calculations to “assess climate impacts.”¹⁰ But no intervenor or protestor argued that the Commission

⁶ Docket No. PL21-3.

⁷ *Id.* (Clements, Comm’r, dissenting at P 3 & n.161).

⁸ See, e.g., *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173 (2023) (inserting *Driftwood* language even though the Environmental Coalition’s rehearing request did not expressly contend the Commission must use the Social Cost of GHGs protocol to assess significance); *Equitrans, L.P.*, 183 FERC ¶ 61,200 (2023) (inserting *Driftwood* language even though no commenters argued the Commission must use the Social Cost of GHGs protocol to assess significance); *Boardwalk Storage Company, LLC*, 184 FERC ¶ 61,062 (2023) (inserting *Driftwood* language even though no commenters argued the Commission must use the Social Cost of GHGs protocol to assess significance) (*Boardwalk*).

⁹ See *Boardwalk*, 184 FERC ¶ 61,062 (Clements, Comm’r, dissenting at PP 3-4); *Equitrans, L.P.*, 183 FERC ¶ 61,200 (Clements, Comm’r, dissenting at PP 2-3); *Commonwealth LNG, LLC*, 183 FERC ¶ 61,173 (Clements, Comm’r, dissenting at PP 5-8); *Rio Grande LNG, LLC and Rio Bravo Pipeline Company, LLC*, 183 FERC ¶ 61,046 (2023) (Clements, Comm’r, dissenting at PP 14-15); *Texas LNG Brownsville LLC*, 183 FERC ¶ 61,047 (2023) (Clements, Comm’r, dissenting at PP 14-15); *Driftwood Pipeline LLC*, 183 FERC ¶ 61,049 (2023) (Clements, Comm’r, dissenting at PP 2-3).

¹⁰ See *Boardwalk*, 184 FERC ¶ 61,062 at P 23. For good measure, the order goes on to make the self-evident point that “to the extent that any of the analysis in the EA is

must use the Social Cost of GHGs protocol either to determine significance or to “assess” impacts. Thus, there was no need to include the *Driftwood* language in the *Boardwalk* order to bolster it for judicial review or any other legally relevant purpose.

5. So too in this case no protestor or intervenor has pursued an argument that the Commission must use the Social Cost of GHGs protocol to assess the GHG emissions attributable to the Southside Reliability Enhancement Project. The majority apparently understands that it can simply omit the *Driftwood* language without adverse legal consequences, and that is exactly what it did here. Very predictably, this has allowed me to concur.¹¹

6. Knowing what the result will be, why does the Commission reflexively and gratuitously include the *Driftwood* language in virtually every Natural Gas Act project order? Is it so repelled by the Social Cost of GHGs protocol that it must drop a house on it in every docket? By now this Commission has said it enough times that everyone knows, for the majority in *Driftwood* at least, the protocol is “not only merely dead, [it’s] really most sincerely dead.”¹²

7. As I have said many times before, I do not know whether the Social Cost of GHGs protocol or another tool can or should be used to determine the significance of GHG emissions or otherwise assess their environmental effects. That is because this Commission has not engaged with the voluminous record in the GHG Policy Statement docket or otherwise seriously studied whether or how the Social Cost of GHGs protocol or other tools could be adapted for these purposes. What I do know is that the Commission’s failure to come to grips with the difficult questions surrounding the assessment of GHG emissions is fraught with legal risk.

8. A key decision every agency must make in complying with the National Environmental Policy Act¹³ is whether to prepare an EA or an Environmental Impact Statement (EIS) for a proposed project it is asked to authorize. The courts have held that

inconsistent with or modified by the Commission’s analysis and findings in the order, it is the order that controls.” *Id.* at P 25.

¹¹ My voting record is easy to interpret. I voted to approve 51 of the 54 Natural Gas Act project orders that have come before me since I began voting in January 2021. I fully dissented in three cases and partially dissented in seven. Six of the ten dissents objected to the *Driftwood* language.

¹² THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939) (paraphrasing Munchkinland Coroner’s death certification for the Wicked Witch of the East).

¹³ See 42 U.S.C. § 4336(b).

“if any ‘significant’ environmental impacts *might* result from the proposed action then an EIS must be prepared.”¹⁴ In approving a project involving substantial GHG emissions, the Commission must either prepare an EIS or risk a court overturning the Commission’s order for failure to explain why the GHG emissions are insignificant and therefore properly addressed in an EA.¹⁵ At the moment, having left the GHG Policy Statement docket dormant, the Commission has no reasoned justification for finding emissions insignificant. Nor does the Commission have any framework for describing the “significance” of the environmental impacts of project related GHG emissions in any EIS it does prepare, as the Council on Environmental Quality’s regulations implementing NEPA require it to do.¹⁶

9. I recognize that the legal and factual questions surrounding GHG emissions are hard. But the Commission cannot recite the *Driftwood* language, click its heels three times, and make them go away. For the benefit of the public we serve, as well as project sponsors whose interests depend on legally durable orders, it is time to do the hard work.

For these reasons, I respectfully concur.

Allison Clements
Commissioner

¹⁴ *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983) (emphasis added); *accord Grand Canyon Trust v. FAA*, 290 F.3d 339, 340 (D.C. Cir. 2002); *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 985 F.3d 1032, 1039 (D.C. Cir. 2021), *cert. denied*, 2022 WL 516382 (Feb. 22, 2022).

¹⁵ Fortunately, the Commission eliminated that risk here by preparing an EIS for the Southside Reliability Enhancement Project.

¹⁶ *See* 40 C.F.R. § 1502.16(a)(1).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP22-461-000

(Issued July 31, 2023)

CHRISTIE, Commissioner, *concurring*:

1. I concur with the finding in PP 54-58 that the upstream GHG emissions are not reasonably foreseeable.
2. Beyond that finding, which is sufficient to concur with this Order, I would add that the Commission has no legal obligation to estimate or consider emissions from upstream, non-jurisdictional activities. Further, the Commission has no legal authority whatsoever to order mitigation of such non-jurisdictional upstream activities, much less to consider such non-jurisdictional upstream emissions in our merits review under the Natural Gas Act.

For these reasons, I respectfully concur.

Mark C. Christie
Commissioner